

EXAMINING THE HUMAN RIGHTS AND LEGAL
IMPLICATIONS OF DHS'S "REMAIN IN MEXICO"
POLICY

HEARING
BEFORE THE
SUBMITTEE ON
BORDER SECURITY, FACILITATION,
AND OPERATIONS
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
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EXAMINING THE HUMAN RIGHTS AND LEGAL IMPLICATIONS OF DHS'S "REMAIN IN MEX- ICO" POLICY

Tuesday, November 19, 2019

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER SECURITY,
FACILITATION, AND OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 310, Cannon House Office Building, Hon. Kathleen M. Rice [Chairwoman of the subcommittee] presiding.

Present: Representatives Rice, Payne, Correa, Torres Small, Green, Barragán, Thompson; Higgins, Lesko, Joyce, Guest, and Rogers.

Also present: Representative Escobar.

Miss RICE. The Subcommittee on Border Security, Facilitation, and Operations will come to order.

The subcommittee is meeting today to receive testimony on examining the human rights and legal implications of DHS's Remain-in-Mexico Policy.

Without objection, the Chair is authorized to declare the subcommittee in recess at any point.

Good morning. Today we will examine the implementation of the Migrant Protection Protocols more commonly known as the Remain-in-Mexico program. This morning we will hear the perspective of practitioners who witness the program's impact on the ground.

Since this program went into effect on January 18, 2019, the Remain-in-Mexico Policy has forced tens of thousands of asylum seekers to wait in Mexico while their claims are processed. However, this brief summary does not even begin to touch on the devastating and destructive impact that this policy has had on countless lives.

Prior to this program's implementation, asylum seekers were permitted to stay in the United States while their cases moved through the courts, a policy based on the humane and common-sense premise that refugees should be given temporary safe haven while it is decided whether or not they may remain in our country.

Under Remain-in-Mexico, however, when migrants who arrive at our Southern Border inform a U.S. official that they are seeking asylum, they are provided a court date and sent back into Mexico until their initial hearing.

These migrants are mostly from Central and South America, having fled their homes to escape gang violence and government oppression. They are almost always strangers to Mexico, with no friends or family to rely on as they wait on a decision from the United States. The cities in which they are forced to wait are some of the most dangerous in Mexico. Cartels are active. Jobs are hard to come by. Even local Government officials have been known to engage in violence and exploitation. As a result, these migrants, who are fleeing violence and oppression, are now being forced to wait in conditions that are just as dangerous as the ones they fled, if not more so. Families waiting in Mexico under this policy face kidnapping, sexual assault, and extortion.

In addition to provoking yet another humanitarian crisis, Remain-in-Mexico presents a serious threat to our National security. The program has created a newly-vulnerable population left completely exposed to exploitation by drug cartels, allowing these criminal organizations to remain active along our border, and even expand their reach.

The administration assured lawmakers and the public that the program would be carefully applied, making exceptions for Mexican nationals, non-Spanish speakers, pregnant women, the LGBTQ community, and people with disabilities. However, investigations and reporting have revealed that individuals from every protected category are frequently turned away and left to fend for themselves in Mexican cities that the U.S. State Department has marked as too dangerous for travel.

Meanwhile, on August 2019, DHS notified Congress that it would build large temporary immigration hearing facilities to conduct Remain-in-Mexico-related proceedings. Located in Brownsville and Laredo, these temporary facilities are functioning as virtual immigration courtrooms, with judges appearing via video conference from brick-and-mortar courtrooms all across the country.

These facilities have become a significant cause for alarm. Lack of public information about the proceedings, limited access to translators and attorneys, and a complete disregard for migrant legal rights are just some of the many problems emerging from this court system. Reports have described secretive assembly line proceedings in the facilities to conduct hundreds of hearings per day. CBP, ICE, and DHS have provided little information on the functioning of these port courts, despite numerous inquiries from news outlets and Congressional staff.

The lack of available information on their operations is exacerbated by the severe restrictions on who can even access the facilities. With barbed wire fences and security managed by private companies, they are closed to the public, news outlets, and legal advocacy organizations. Despite the clear legal standard that all immigration proceedings are to be open to the public, CBP has rejected request after request for access.

These facilities dramatically worsen the chaotic nature of the program by removing any ability for migrants to access legal aid.

Furthermore, the prohibitions on oversight expose migrants to violations of the due process rights established for asylum seekers in U.S. law. We have invited our witnesses here to shed light on

this disgraceful and untenable situation, and I thank them for joining us today.

Our asylum laws emerged after the Second World War, as our Nation faced the shameful truth that we failed to provide safe haven to refugees fleeing the Nazis. Since then we have granted asylum to desperate communities fleeing danger all over the world and, in doing so, saved an untold number of lives. The Remain-in-Mexico Policy is a reprehensible step backward, and a continuation of this administration's abandonment of our Nation's long-standing and bipartisan tradition of protecting asylum seekers and refugees.

We hope today to build public awareness of this policy and improve our own understanding, so that we can find a way toward stopping this needless harm inflicted on the men, women, and children seeking safety in our great country.

[The statement of Chairwoman Rice follows:]

STATEMENT OF CHAIRWOMAN KATHLEEN M. RICE

NOVEMBER 19, 2019

Today the Subcommittee on Border Security, Facilitation, and Operations will examine the implementation of the Migrant Protection Protocols (MPP), more commonly known as the "Remain in Mexico" program. This morning we will hear the perspective of practitioners who witness the program's impact on the ground. Since this program went into effect on January 18, 2019, the Remain in Mexico policy has forced tens of thousands of asylum seekers to wait in Mexico while their claims are processed. However, this brief summary does not even begin to touch on the devastating and destructive impact that this policy has had on countless lives. Prior to this program's implementation, asylum seekers were permitted to stay in the United States while their cases moved through the courts, a policy based on the humane and common-sense premise that refugees should be given temporary safe haven while it is decided whether or not they may remain in our country.

Under Remain in Mexico however, when migrants who arrive at our Southern Border inform a U.S. official that they are seeking asylum, they are provided a court date and sent back into Mexico until their initial hearing. These migrants are mostly from Central and South America, having fled their homes to escape gang violence and government oppression. They are almost always strangers to Mexico, with no friends or family to rely on as they wait on a decision from the United States. The cities in which they are forced to wait are some of the most dangerous in Mexico. Cartels are active, jobs are hard to come by, and even local government officials have been known to engage in violence and exploitation. As a result, these migrants—who were fleeing violence and oppression—are now being forced to wait in conditions that are just as dangerous as the ones they fled. If not more so. Families waiting in Mexico under this policy face kidnapping, sexual assault, and extortion. In addition to provoking yet another humanitarian crisis, Remain in Mexico presents a serious threat to our National security. The program has created a newly vulnerable population left completely exposed to exploitation by drug cartels, allowing these criminal organizations to remain active along our border and even expand their reach.

The administration assured lawmakers and the public that the program would be carefully applied, making exceptions for Mexican nationals, non-Spanish-speakers, pregnant women, the LGBTQ community, and people with disabilities. However, investigations and reporting have revealed that individuals from every protected category are frequently turned away and left to fend for themselves in Mexican cities that the U.S. State Department has marked as too dangerous for travel. Meanwhile, in August 2019, DHS notified Congress that it would build large temporary immigration hearing facilities to conduct Remain-in-Mexico-related proceedings. Located in Brownsville and Laredo, these temporary facilities are functioning as virtual immigration courtrooms, with judges appearing via video conference from brick-and-mortar courtrooms across the country.

These facilities have become a significant cause for alarm. Lack of public information about the proceedings, limited access to translators and attorneys, and a complete disregard for migrant legal rights are just some of the many problems emerging from this court system. Reports have described "secretive, assembly line" pro-

ceedings in the facilities to conduct hundreds of hearings per day. CBP, ICE, and DHS have provided little information on the functioning of these “Port Courts” despite numerous inquiries from news outlets and Congressional staff. The lack of available information on their operations is exacerbated by the severe restrictions on who can even access the facilities. With barbed wire fences and security managed by private companies, they are closed to the public, news outlets, and legal advocacy organizations. Despite the clear legal standard that all immigration proceedings are to be open to the public, CBP has rejected request after request for access. These facilities dramatically worsen the chaotic nature of the program by removing any ability for migrants to access legal aid.

Furthermore, the prohibitions on oversight expose migrants to violations of the due process rights established for asylum seekers in U.S. law. We have invited our witnesses here to shed light on this disgraceful and untenable situation. And I thank them for joining us today. Our Asylum laws emerged after the Second World War, as our Nation faced the shameful truth that we failed to provide safe haven to refugees fleeing the Nazis. Since then, we have granted asylum to desperate communities fleeing danger all over the world and in doing so saved an untold number of lives. The Remain-in-Mexico policy is a reprehensible step backwards, and a continuation of this administration’s abandonment of our Nation’s longstanding—and bipartisan—tradition of protecting asylum seekers and refugees.

We hope today to build public awareness of this policy and improve our own understanding so that we can find a way toward stopping this needless harm inflicted on the men, women, and children seeking safety in our great country.

Miss RICE. The Chair now recognizes the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, for an opening statement.

Mr. HIGGINS. Thank you, Madam Chair, and thank you to our witnesses for being here today. While I look forward to hearing your testimony, I also would like to voice that I am disappointed that no DHS officials actually responsible for negotiating and implementing the Migrant Protection Protocols agreement with the Government of Mexico were invited to testify today by the Majority.

I am also concerned by the partisan preconceptions surrounding the hearing title. This past year we saw crisis at the border, which was referred to by some as a fake emergency. It virtually exploded, as over 977,000 people attempted to illegally enter the United States through our Southwest Border. That is more than we encountered in 2017 and 2018, combined. It is larger than the population of the entire State of Delaware.

Historically, most illegal immigrants have been single adults from Mexico looking for temporary work. During fiscal year 2000, Border Patrol was able to repatriate the majority of those detained within hours. Today most illegal immigrants are family units and unaccompanied minors from Guatemala, Honduras, and El Salvador. In fiscal year 2019, Customs and Border Protection encountered 473,682 families. That is nearly a 3,200 percent increase from fiscal year 2013.

This change is directly tied to criminal organizations exploiting loopholes in our immigration laws as propaganda to convince people to bring children to the border. Migrants are giving up their life savings—in many cases, mortgaging homes, and properties, farms, perhaps handing over their children to smugglers because they are falsely being told that children are visas to get into this country. Even the Guatemalan Ministry of Foreign Affairs has publicly confirmed this.

Smugglers don’t care about the well-being of migrants. They only care about turning a profit. In fiscal year 2019 Customs and Border

Protection averaged 71 hospital visits per day for the migrants who arrived at our border in deteriorating health. The Border Patrol conducted over 4,900 rescues of immigrants who smugglers left to die.

Former Acting DHS Secretary McAleenan testified in July that more than 5,500 fraudulent family cases have been uncovered where the adult is not the parent of the child. One thousand of those have already resulted in prosecutions. Worse, the cartels are sending children back on commercial airlines to their home country, and then returning to the border with different adults. Agents call this practice “recycling children.” ICE identified 600 children who have gone through this. One child told investigators he was forced to make the trip 8 times.

There is a common misconception that most people illegally crossing our border are seeking asylum. However, less than 20 percent of immigrants in Customs and Border Protection custody are found to have, “credible fear” to return to their home country. In fiscal year 2018 that number was 18 percent.

For those saying everyone is turning themselves in, that is not the case. According to Customs and Border Protection, last year more than 150,000 migrants who illegally entered this country got away from authorities, evading capture, and making their way into the interior.

The Trump administration has been forced to act alone and has taken several important actions to mitigate the crisis as gridlock over immigration reform continues in Congress.

DHS implemented the Migrant Protection Protocols, MPP, program to cut down on the overcrowding of migrants in DHS custody and the number of migrants being released into U.S. communities due to immigration court backlog. At one point this year, CBP had almost 20,000 people in custody. Now they are averaging less than 3,500.

DHS has invested in temporary courtrooms near Southwest Border ports of entry to help expedite immigration hearings for MPP individuals. MPP ends the economic incentive of making a meritless asylum claim, considering only 20 percent of asylum claims get favorable final judgment, but every asylum applicant released in the interior is provided with work authorization.

Department of Justice statistics point to more than 89,000 orders of removal in absentia for fiscal year 2019 for those who were not detained. MPP mitigates the risk that those ordered removed will disappear into the United States’ interior.

This month, DHS, the State Department, and the International Organization for Migration visited several shelters operated by faith-based organizations and the Government of Mexico that houses MPP individuals. These shelters were found to have a persistent law enforcement presence, adequate medical care, and access to food and water.

Today’s hearing could have been an opportunity to bring in the Department to ask about that visit and discuss the implementation of the MPP program in greater detail. We have seemingly foregone a fact-finding mission for something that might resemble a show trial.

Nevertheless, I want to thank our witnesses for appearing before us today, and I look forward to your testimony.
[The statement of Ranking Member Higgins follows:]

STATEMENT OF RANKING MEMBER CLAY HIGGINS

Nov. 19, 2019

Thank you, Madam Chair, and thank you to our witnesses for being here today. While I look forward to hearing your testimony, I also want to voice that I am disappointed that no DHS officials responsible for negotiating and implementing the Migrant Protection Protocols agreement with the government of Mexico were invited to testify by the majority.

I am also concerned by the partisan pre-conceptions surrounding the hearing title. This past year we saw what some Democrats on this committee called a “Fake Emergency” explode as over 977,000 people attempted to illegally enter the United States through our Southwest Border.

That’s more than fiscal year 2017 and fiscal year 2018 combined, and larger than the population of the entire State of Delaware.

Historically, most illegal immigrants have been single adults from Mexico looking for temporary work. During fiscal year 2000, Border Patrol was able to repatriate the majority of those detained within hours.

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This change is directly tied to criminal organizations exploiting loopholes in our immigration laws as propaganda to convince people to bring children to the border.

Migrants are giving up their life savings, mortgaging their homes and farms, and handing over their children to smugglers, because they are falsely being told that children are “visas” to get into this country. Even the Guatemalan Ministry of Foreign Affairs has publicly confirmed this.

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Worse, cartels are sending children back on commercial airlines to their home country to then return at the border with different adults. Agents call this practice “recycling children”. ICE identified 600 children who have gone through this. One child told investigators he was forced to make the trip 8 times.

There’s a common misconception that most people illegally crossing our border are seeking asylum. However, less than 20 percent of migrants in CBP custody actively claim they have a “credible fear” of return to their home country while in custody. In fiscal year 2018 that number was 18 percent.

And for those saying everyone is turning themselves in, that is not the case. According to CBP, last year more than 150,000 migrants who illegally entered this country got away from authorities, evading capture and making their way into the interior.

The Trump administration has been forced to act alone and has taken several important actions to mitigate the crisis as gridlock over immigration reform continues in Congress.

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This month, DHS, the State Department, and the International Organization for Migration visited several shelters operated by faith-based organizations and the government of Mexico that house MPP individuals. Those shelters were found to have a persistent law enforcement presence, adequate medical care, and access to food and water.

Today's hearing is a missed opportunity to bring in the Department to ask about that visit and discuss the implementation of the MPP program in greater detail. We've forgone a fact-finding mission for nothing short of a show trial.

Nevertheless, I want to again thank our witnesses for appearing before us today and I look forward to your testimony. I yield back.

Mr. HIGGINS. Madam Chairwoman, I yield back.

Miss RICE. Thank you, Mr. Higgins. The Chair now recognizes the Chairman of the full committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Thank you very much, Chairman Rice. Today the subcommittee will hear about how the Trump's administration Remain-in-Mexico Policy has distorted our immigration system by effectively closing the door to people seeking safety in this country.

I share Chairwoman's—Rice's concerns about the legal and humanitarian implications of this misguided policy and thank her for calling this hearing.

While the Department of Homeland Security officials have argued Remain-in-Mexico has allowed U.S. Customs and Border Protection to regain operational control of our border with Mexico, we actually know better. In fact, the policy has raised serious legal questions and created a new humanitarian crisis along our Southern Border.

Moreover, it runs contrary to our American values. Returning migrants with known physical, mental, and developmental disabilities in Mexico is unacceptable. Sending pregnant women into Mexico, where there is no safe housing or basic medical care for them, is unacceptable. Establishing secretive courts that DHS uses to process asylum seekers forced to return to Mexico runs contrary to our values.

Indeed, immigration court proceedings are generally open to the public for the sake of transparency. The American Immigration Lawyers Association, ACLU, and Amnesty International, among others, regularly observe these proceedings. However, these organizations have been repeatedly denied access to the new temporary port courts in Brownsville and Laredo.

For those of you who are familiar with the Rio Grande Valley, you know about the work of—Sister Norma of Catholic Charities carries out to assist migrants in that region. Sister Norma has also been denied entry to the port courts multiple times, with no real explanation as to why. These observers are desperately needed.

Attorneys who have been able to get into the port courts uniformly talk about court operations that run roughshod over basic due process rights. Paperwork is filled out with wrong information, or certain information sections are purposely left blank, for example. Every step that can be taken to limit the amount of time an attorney can meet with their client is taken.

CBP has even allegedly fabricated future hearing dates for migrants who are granted asylum in order to return them to Mexico. The administration appears intent on cutting off access to the lawful asylum process, even if their actions are legally questionable, or force vulnerable adults and children into danger.

I look forward to hearing from our panelists about their first-hand observation and experience with the Remain-in-Mexico Policy and the temporary port courts. Their testimony will help inform the committee's future oversight work.

Efficient and effective border security has long been a bipartisan priority of this committee. But blocking the asylum process for vulnerable people and risking their lives by putting them in harm's way does not make us any safer; it just makes us less than the America we have held ourselves out to be.

Again, I thank the Chairwoman for holding today's hearing, and the Members of the committee for their participation.

I yield back.

[The statement of Chairman Thompson follows:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

NOVEMBER 19, 2019

Today, the subcommittee will hear about how the Trump administration's "Remain in Mexico" policy has distorted our immigration system by effectively closing the door to people seeking safety in this country. I share Chairwoman Rice's concerns about the legal and humanitarian implications of this misguided policy and thank her for calling this hearing. While Department of Homeland Security officials have argued "Remain in Mexico" has allowed U.S. Customs and Border Protection to regain operational control of our border with Mexico, we know better. In fact, the policy has raised serious legal questions and created a new humanitarian crisis along our Southern Border. Moreover, it runs contrary to our American values.

Returning migrants with known physical, mental, and developmental disabilities to Mexico is unacceptable. Sending pregnant women in to Mexico, where there is no safe housing or basic medical care for them is unacceptable. Establishing secretive courts that DHS uses to process asylum seekers forced to return to Mexico runs contrary to our values. Indeed, immigration court proceedings are generally open to the public for the sake of transparency. American Immigration Lawyers Association, ACLU, and Amnesty International, among others regularly observe proceedings. However, these organizations have been repeatedly denied access to the new temporary port courts in Brownsville and Laredo.

For those of you who are familiar with the Rio Grande Valley, you know about the work Sister Norma of Catholic Charities carries out to assist migrants in that region. Sister Norma has also been denied entry to the port courts multiple times with no real explanation as to why. These observers are desperately needed. Attorneys who have been able to get in to the port courts uniformly talk about "court" operations that run roughshod over basic due process rights. Paperwork is filled out with wrong information or certain sections are purposely left blank, for example. Every step that can be taken to limit the amount of time an attorney can meet with their clients is taken. CBP has even allegedly fabricated future hearing dates for migrants who were granted asylum in order to return them to Mexico. The administration appears intent on cutting off access to the lawful asylum process, even if their actions are legally questionable or force vulnerable adults and children into danger.

I look forward to hearing from our panelists about their first-hand observations and experience with the Remain in Mexico policy and the temporary port courts. Their testimony will help inform the committee's future oversight work. Efficient and effective border security has long been a bipartisan priority of this committee. But blocking the asylum process for vulnerable people and risking their lives by putting them in harm's way does not make us any safer. It just makes us less than the America we have held ourselves out to be.

Miss RICE. Thank you, Mr. Chairman. The Chair now recognizes the Ranking Member of the full committee, the gentleman from Alabama, Mr. Rogers, for an opening statement.

Mr. ROGERS. Thank you, Chairman Rice. Let me say for the record I wholeheartedly support the Remain-in-Mexico Policy. I think it is an essential policy, and it is in no way inhumane.

This past year nearly 1 million illegal immigrants were encountered attempting to cross our Southwest Border. It led to an unprecedented humanitarian crisis. CBP facilities were overwhelmed and overrun, leading to dangerous conditions, both for migrants and law enforcement officers. Every day up to 50 percent of Border Patrol agents were taken off the line to process and care for immigrants.

For months the administration requested emergency funds for new authorities to deal with this crisis. For months my colleagues ignored the crisis as a fake emergency. Finally, Congress acted and provided critical emergency funding. While the funding helped, it did nothing to address the root cause of the crisis, and that is loopholes in our asylum laws.

Democrats have yet to move any legislation to close those loopholes. In the face of Congressional inaction, the Trump administration has been forced to act on its own. The administration has secured agreements with Mexico, Guatemala, Honduras, and El Salvador to improve security cooperation across the region and reduce exploitation of our immigration laws.

After negotiations with Mexico, DHS also implemented the Migrant Protection Protocols Program as a part of a regional strategy to prevent abuse of our asylum laws, while protecting those with legitimate claims. MPP discourages non-meritorious or false asylum claims, and actually helps decrease the wait time for immigrant court hearings. Migrants under the MPP program wait months, compared to years for those currently within the interior.

Congress should focus on reforming our immigration laws, instead of holding messaging hearings.

Thank you, Mr. Chairman. I will yield back.

[The statement of Ranking Member Rogers follows:]

STATEMENT OF RANKING MEMBER MIKE ROGERS

NOVEMBER 19, 2019

This past year nearly 1 million illegal immigrants were encountered attempting to cross our Southwest Border illegally.

It led to an unprecedented humanitarian and security crisis.

CBP facilities were overwhelmed and overrun, leading to dangerous conditions both for migrants and law enforcement officers.

Every day, up to 50 percent of Border Patrol agents were taken off the line to process and care for migrants.

For months, the administration requested emergency funds and new authorities to deal with the crisis.

For months, my colleagues ignored the crisis calling it a “Fake Emergency”.

Finally, Congress acted and provided critical emergency funding.

While the funding helped, it did nothing to address the root cause of the crisis—the loopholes in our asylum laws.

Democrats have yet to move any legislation to close these loopholes.

In the face of Congressional inaction, the Trump administration has been forced to act on its own.

The administration has secured agreements with Mexico, Guatemala, Honduras, and El Salvador to improve security cooperation across the region and reduce exploitation of our immigration laws.

After negotiations with Mexico, DHS also implemented the Migrant Protection Protocols program as part of a regional strategy to prevent abuse of our asylum laws, while protecting those with legitimate claims.

MPP discourages non-meritorious or false asylum claims and actually helps decrease wait times for immigration court hearings.

Migrants under the MPP program wait months compared to years for those currently within the interior. Congress should focus on reforming our immigration laws instead of holding messaging hearings.

Mr. HIGGINS. Madam Chair.

Miss RICE. Thank you.

Yes?

Mr. HIGGINS. I would like to seek unanimous consent to submit the Department of Homeland Security's October 2019 assessment of MPP program for the record.

Miss RICE. Yes. So ordered.

[The information follows:]

ASSESSMENT OF THE MIGRANT PROTECTION PROTOCOLS (MPP)

OCTOBER 28, 2019

I. OVERVIEW AND LEGAL BASIS

The Department of Homeland Security (DHS) remains committed to using all available tools to address the unprecedented security and humanitarian crisis at the Southern Border of the United States.

- At peak of the crisis in May 2019, there were more than 4,800 aliens crossing the border daily—representing an average of more than 3 apprehensions per minute.
- The law provides for mandatory detention of aliens who unlawfully enter the United States between ports of entry if they are placed in expedited removal proceedings. However, resource constraints during the crisis, as well as other court-ordered limitations on the ability to detain individuals, made many releases inevitable, particularly for aliens who were processed as members of family units.

Section 235(b)(2)(C) of the Immigration and Nationality Act (INA) authorizes the Department of Homeland Security to return certain applicants for admission to the contiguous country from which they are arriving on land (whether or not at a designated port of entry), pending removal proceedings under INA § 240.

- Consistent with this express statutory authority, DHS began implementing the Migrant Protection Protocols (MPP) and returning aliens subject to INA § 235(b)(2)(C) to Mexico, in January 2019.
- Under MPP, certain aliens who are nationals and citizens of countries other than Mexico (third-country nationals) arriving in the United States by land from Mexico who are not admissible may be returned to Mexico for the duration of their immigration proceedings.

The U.S. Government initiated MPP pursuant to U.S. law, but has implemented and expanded the program through on-going discussions, and in close coordination, with the Government of Mexico (GOM).

- MPP is a core component of U.S. foreign relations and bilateral cooperation with GOM to address the migration crisis across the shared U.S.-Mexico border.
- MPP expansion was among the key “meaningful and unprecedented steps” undertaken by GOM “to help curb the flow of illegal immigration to the U.S. border since the launch of the U.S.-Mexico Declaration in Washington on June 7, 2019.”¹
- On September 10, 2019, Vice President Pence and Foreign Minister Ebrard “agree[d] to implement the Migrant Protection Protocols to the fullest extent possible.”²
- Therefore, disruption of MPP would adversely impact U.S. foreign relations—along with the U.S. Government’s ability to effectively address the border security and humanitarian crisis that constitutes an on-going National emergency.³

¹ <https://www.whitehouse.gov/briefings-statements/readout-vice-president-mike-pences-meeting-mexican-foreign-secretary-marcelo-ebarrard/>.

² <https://www.whitehouse.gov/briefings-statements/readout-vice-president-mike-pences-meeting-mexican-foreign-secretary-marcelo-ebarrard/>.

³ <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-emergency-concerning-southern-border-united-states/>.

II. MPP HAS DEMONSTRATED OPERATIONAL EFFECTIVENESS

In the past 9 months—following a phased implementation, and in close coordination with GOM—DHS has returned more than 55,000 aliens to Mexico under MPP. MPP has been an indispensable tool in addressing the on-going crisis at the Southern Border and restoring integrity to the immigration system.

Apprehensions of Illegal Aliens are Decreasing

- Since a recent peak of more than 144,000 in May 2019, total enforcement actions—representing the number of aliens apprehended between points of entry or found inadmissible at ports of entry—have decreased by 64 percent, through September 2019.
- Border encounters with Central American families—who were the main driver of the crisis and comprise a majority of MPP-amenable aliens—have decreased by approximately 80 percent.
- Although MPP is one among many tools that DHS has employed in response to the border crisis, DHS has observed a connection between MPP implementation and decreasing enforcement actions at the border—including a rapid and substantial decline in apprehensions in those areas where the most amenable aliens have been processed and returned to Mexico pursuant to MPP.

MPP is Restoring Integrity to the System

- Individuals returned to Mexico pursuant to MPP are now at various stages of their immigration proceedings: Some are awaiting their first hearing; some have completed their first hearing and are awaiting their individual hearing; some have received an order of removal from an immigration judge and are now pursuing an appeal; some have established a fear of return to Mexico and are awaiting their proceedings in the United States; some have been removed to their home countries; and some have withdrawn claims and elected to voluntarily return to their home countries.
- MPP returnees with meritorious claims can be granted relief or protection within months, rather than remaining in limbo for years while awaiting immigration court proceedings in the United States.
 - The United States committed to GOM to minimize the time that migrants wait in Mexico for their immigration proceedings. Specifically, the Department of Justice (DOJ) agreed to treat MPP cases such as detained cases such that they are prioritized according to longstanding guidance for such cases.
 - The first 3 locations for MPP implementation—San Diego, Calexico, and El Paso—were chosen because of their close proximity to existing immigration courts.
 - After the June 7, 2019, Joint Declaration between GOM and the United States providing for expansion of MPP through bilateral cooperation, DHS erected temporary, dedicated MPP hearing locations at ports of entry in Laredo and Brownsville, in coordination with DOJ, at a total 6-month construction and operation cost of approximately \$70 million.
- Individuals processed in MPP receive initial court hearings within 2 to 4 months, and—as of October 21, 2019—almost 13,000 cases had been completed at the immigration court level.
- A small subset of completed cases have resulted in grants of relief or protection, demonstrating that MPP returnees with meritorious claims can receive asylum, or any relief or protection for which they are eligible, more quickly via MPP than under available alternatives.
- Individuals not processed under MPP generally must wait years for adjudication of their claims. There are approximately 1 million pending cases in DOJ immigration courts. Assuming the immigration courts received no new cases and completed existing cases at a pace of 30,000 per month—it would take several years, until approximately the end of 2022, to clear the existing backlog.
- MPP returnees who do not qualify for relief or protection are being quickly removed from the United States. Moreover, aliens without meritorious claims—which no longer constitute a free ticket into the United States—are beginning to voluntarily return home.
- According to CBP estimates, approximately 20,000 people are sheltered in northern Mexico, near the U.S. border, awaiting entry to the United States. This number—along with the growing participation in an Assisted Voluntary Return (AVR) program operated by the International Organization for Migration (IOM), as described in more detail below—suggests that a significant proportion of the 55,000+ MPP returnees have chosen to abandon their claims.

III. BOTH GOVERNMENTS ENDEAVOR TO PROVIDE SAFETY AND SECURITY FOR MIGRANTS

The Government of Mexico (GOM) has publicly committed to protecting migrants.

- A December 20, 2018, GOM statement indicated that “Mexico will guarantee that foreigners who have received their notice fully enjoy the rights and freedoms recognized in the Constitution, in the international treaties to which the Mexican state is a party, as well as in the current Migration Law. They will be entitled to equal treatment without any discrimination and due respect to their human rights, as well as the opportunity to apply for a work permit in exchange for remuneration, which will allow them to meet their basic needs.”
- Consistent with its commitments, GOM has accepted the return of aliens amenable to MPP. DHS understands that MPP returnees in Mexico are provided access to humanitarian care and assistance, food and housing, work permits, and education.
- GOM has launched an unprecedented enforcement effort bringing to justice transnational criminal organizations (TCOs) who prey on migrants transiting through Mexico—enhancing the safety of all individuals, including MPP-amenable aliens.
- As a G-20 country with many of its 32 states enjoying low unemployment and crime, Mexico’s commitment should be taken in good faith by the United States and other stakeholders. Should GOM identify any requests for additional assistance, the United States is prepared to assist.

Furthermore, the U.S. Government is partnering with international organizations offering services to migrants in cities near Mexico’s northern border.

- In September 2019, the U.S. Department of State Bureau of Population, Refugees, and Migration (PRM) funded a \$5.5 million project by IOM to provide shelter in cities along Mexico’s northern border to approximately 8,000 vulnerable third-country asylum seekers, victims of trafficking, and victims of violent crime in cities along Mexico’s northern border.
- In late September 2019, PRM provided \$11.9 million to IOM to provide cash-based assistance for migrants seeking to move out of shelters and into more sustainable living.

The U.S. Government is also supporting options for those individuals who wish to voluntarily withdraw their claims and receive free transportation home. Since November 2018, IOM has operated its AVR program from hubs within Mexico and Guatemala, including Tijuana and Ciudad Juárez. PRM has provided \$5 million to IOM to expand that program to Matamoros and Nuevo Laredo and expand operations in other Mexican northern border cities. As of mid-October, almost 900 aliens in MPP have participated in the AVR program.

The United States’ on-going engagement with Mexico is part of a larger framework of regional collaboration. Just as United Nations High Commissioner for Refugees has called for international cooperation to face the serious challenges in responding to large-scale movement of migrants and asylum seekers traveling by dangerous and irregular means, the U.S. Government has worked with Guatemala, El Salvador, and Honduras to form partnerships on asylum cooperation (which includes capacity-building assistance), training and capacity building for border security operations, biometrics data sharing and increasing access to H-2A and H-2B visas for lawful access to the United States.

IV. SCREENING PROTOCOLS APPROPRIATELY ASSESS FEAR OF PERSECUTION OR TORTURE

- When a third-country alien states that he or she has a fear of persecution or torture in Mexico, or a fear of return to Mexico, the alien is referred to U.S. Citizenship & Immigration Services (USCIS). Upon referral, USCIS conducts an MPP fear-assessment interview to determine whether it is more likely than not that the alien will be subject to torture or persecution on account of a protected ground if returned to Mexico.
- MPP fear assessments are conducted consistent with U.S. law implementing the non-refoulement obligations imposed on the United States by certain international agreements and inform whether an alien is processed under—or remains—in MPP.
- As used here, “persecution” and “torture” have specific international and domestic legal meanings distinct from fear for personal safety. Fear screenings are a well-established part of MPP. As of October 15, 2019, USCIS completed over 7,400 screenings to assess a fear of return to Mexico.
- That number included individuals who express a fear upon initial encounter, as well as those who express a fear of return to Mexico at any subsequent point in their immigration proceedings, including some individuals who have made multiple claims.

- Of those, approximately 13 percent have received positive determinations and 86 percent have received negative determinations.
- Thus, the vast majority of those third-country aliens who express fear of return to Mexico are not found to be more likely than not to be tortured or persecuted on account of a protected ground there. This result is unsurprising, not least because aliens amenable to MPP voluntarily entered Mexico en route to the United States.

V. SUMMARY AND CONCLUSION

In recent years, only about 15 percent of Central American nationals making asylum claims have been granted relief or protection by an immigration judge. Similarly, affirmative asylum grant rates for nationals of Guatemala, El Salvador, and Honduras were approximately 21 percent in fiscal year 2019. At the same time, there are—as noted above—over 1 million pending cases in DOJ immigration courts, in addition to several hundred thousand asylum cases pending with USCIS.

These unprecedented backlogs have strained DHS resources and challenged its ability to effectively execute the laws passed by Congress and deliver appropriate immigration consequences: Those with meritorious claims can wait years for protection or relief, and those with non-meritorious claims often remain in the country for lengthy periods of time.

This broken system has created perverse incentives, with damaging and far-reaching consequences for both the United States and its regional partners. In fiscal year 2019, certain regions in Guatemala and Honduras saw 2.5 percent of their population migrate to the United States, which is an unsustainable loss for these countries.

MPP is one among several tools DHS has employed effectively to reduce the incentive for aliens to assert claims for relief or protection, many of which may be meritless, as a means to enter the United States to live and work during the pendency of multi-year immigration proceedings. Even more importantly, MPP also provides an opportunity for those entitled to relief to obtain it within a matter of months. MPP, therefore, is a cornerstone of DHS's on-going efforts to restore integrity to the immigration system—and of the United States' agreement with Mexico to address the crisis at our shared border.

APPENDIX A: ADDITIONAL ANALYSIS OF MPP FEAR-ASSESSMENT PROTOCOL

U.S. Citizenship and Immigration Services (USCIS) strongly believes that if DHS were to change its fear-assessment protocol to affirmatively ask an alien amenable to MPP whether he or she fears return to Mexico, the number of fraudulent or meritless fear claims will significantly increase. This prediction is, in large part, informed by USCIS's experience conducting credible fear screenings for aliens subject to expedited removal. Credible fear screenings occur when an alien is placed into expedited removal under section 235(b)(1) of the Immigration and Nationality Act—a streamlined removal mechanism enacted by Congress to allow for prompt removal of aliens who lack valid entry documents or who attempt to enter the United States by fraud—and the alien expresses a fear of return to his or her home country or requests asylum. Under current expedited removal protocol, the examining immigration officer—generally U.S. Customs and Border Protection officers at a port of entry or Border Patrol agents—read 4 questions, included on Form I-867B, to affirmatively ask each alien subject to expedited removal whether the alien has a fear of return to his or her country of origin.⁴

The percentage of aliens subject to expedited removal who claimed a fear of return or requested asylum was once quite modest. However, over time, seeking asylum has become nearly a default tactic used by undocumented aliens to secure their release into the United States. For example, in 2006, of the 104,440 aliens subjected to expedited removal, only 5 percent (5,338 aliens) were referred for a credible fear interview with USCIS. In contrast, 234,591 aliens were subjected to expedited removal in 2018, but 42 percent (or 99,035) were referred to USCIS for a credible fear interview, significantly straining USCIS resources.

⁴ See 8 C.F.R. § 235.3(b)(2).

TABLE A1: ALIENS SUBJECT TO EXPEDITED REMOVAL AND SHARE
MAKING FEAR CLAIMS, FISCAL YEAR 2006–2018

Fiscal Year	Subjected to Expedited Removal	Referred for a Credible Fear Interview	Percentage Referred for Credible Fear
2006	104,440	5,338	5
2007	100,992	5,252	5
2008	117,624	4,995	4
2009	111,589	5,369	5
2010	119,876	8,959	7
2011	137,134	11,217	8
2012	188,187	13,880	7
2013	241,442	36,035	15
2014	240,908	51,001	21
2015	192,120	48,052	25
2016	243,494	94,048	39
2017	178,129	78,564	44
2018	234,591	99,035	42

Transitioning to an affirmative fear questioning model for MPP-amenable aliens would likely result in a similar increase. Once it becomes known that answering “yes” to a question can prevent prompt return to Mexico under MPP, DHS would experience a rise in fear claims similar to the expedited removal/credible fear process. And, affirmatively drawing out this information from aliens rather than reasonably expecting them to come forward on their own initiative could well increase the meritless fear claims made by MPP-amenable aliens.

It also bears emphasis that relatively small proportions of aliens who make fear claims ultimately are granted asylum or another form of relief from removal. Table A2 describes asylum outcomes for aliens apprehended or found inadmissible on the Southwest Border in fiscal years 2013–2018. Of the 416 thousand aliens making fear claims during that 6-year period, 311 thousand (75 percent) had positive fear determinations, but only 21 thousand (7 percent of positive fear determinations) had been granted asylum or another form of relief from removal as of March 31, 2019, versus 72 thousand (23 percent) who had been ordered removed or agreed to voluntary departure. (Notably, about 70 percent of aliens with positive fear determinations in fiscal year 2013–2018 remained in EOIR proceedings as of March 31, 2019.)

TABLE A2: ASYLUM OUTCOMES, SOUTHWEST BORDER ENCOUNTERS, FISCAL YEAR 2013–2018

Year of Encounter	2013	2014	2015	2016	2017	2018	Total
Total Encounters	490,093	570,832	446,060	560,432	416,645	522,626	3,006,688
Subjected to ER	225,426	222,782	180,328	227,382	160,577	214,610	1,231,105
Fear Claims *	39,648	54,850	50,588	98,265	72,026	100,756	416,133
Positive Fear Determinations **	31,462	36,615	35,403	76,005	55,251	75,856	310,592
Asylum Granted or Other Relief ***	3,687	4,192	3,956	4,775	2,377	2,168	21,155
Removal Orders ****	11.7%	11.4%	11.2%	6.3%	4.3%	2.9%	6.8%
Asylum Cases Pending	9,980	11,064	9,466	17,700	12,130	11,673	72,013
Other	17,554	21,104	21,737	53,023	40,586	61,918	215,922
	241	255	244	507	158	97	1,502

Source: DHS Office of Immigration Statistics Enforcement Lifecycle.

Notes for Table A2: Asylum outcomes are current as of March 31, 2019.

* Fear claims include credible fear cases completed by USCIS as well as individuals who claimed fear at the time of apprehension but who have no record of a USCIS fear determination, possibly because they withdrew their claim.

** Positive fear determinations include positive determinations by USCIS as well as negative USCIS determinations vacated by EOIR.

*** Asylum granted or other relief includes withholding of removal, protection under the Convention Against Torture, Special Immigrant Juvenile status, cancellation of removal, and other permanent status conferred by EOIR.

**** Removal orders include completed repatriations and unexecuted orders of removal and grants of voluntary departure.

Implementing MPP assessments currently imposes a significant resource burden to DHS. As of October 15, 2019, approximately 10 percent of individuals placed in MPP have asserted a fear of return to Mexico and have been referred to an asylum officer for a MPP fear assessment. The USCIS Asylum Division assigns on average approximately 27 asylum officers per day to handle this caseload Nation-wide. In addition, the Asylum Division must regularly expend overtime resources after work hours and on weekends to keep pace with the same-day/next-day processing requirements under MPP. This workload diverts resources from USCIS's affirmative asylum caseload, which currently is experiencing mounting backlogs.

Most importantly, DHS does not believe amending the process to affirmatively ask whether an alien has a fear of return to Mexico is necessary in order to properly identify aliens with legitimate fear claims in Mexico because under DHS's current procedures, aliens subject to MPP may raise a fear claim to DHS at any point in the MPP process. Aliens are not precluded from receiving a MPP fear assessment from an asylum officer if they do not do so initially upon apprehension or inspection, and many do. As of October 15, 2019,⁵ approximately 4,680 aliens subject to MPP asserted a fear claim and received an MPP fear-assessment after their initial encounter or apprehension by DHS, with 14 percent found to have a positive fear of return to Mexico. Additionally, Asylum Division records indicate as of October 15, 2019,⁶ approximately 618 aliens placed into MPP have asserted multiple fear claims during the MPP process (from the point of placement into MPP at the initial encounter or apprehension) and have therefore received multiple fear assessments to confirm whether circumstances have changed such that the alien should not be returned to Mexico. Of these aliens, 14 percent were found to have a positive fear of return to Mexico.

Additionally, asylum officers conduct MPP fear assessments with many of the same safeguards provided to aliens in the expedited removal/credible fear context. For example, DHS officers conduct MPP assessment interviews in a non-adversarial manner, separate and apart from the general public, with the assistance of language interpreters when needed.⁷

In conducting MPP assessments, asylum officers apply a "more likely than not" standard, which is a familiar standard. "More likely than not" is equivalent to the "clear probability" standard for statutory withholding and not unique to MPP. Asylum officers utilize the same standard in the reasonable fear screening process when claims for statutory withholding of removal and protection under the Convention Against Torture (CAT).⁸ The risk of harm standard for withholding (or deferral) of removal under the Convention Against Torture (CAT) implementing regulations is the same, i.e., "more likely than not."⁹ In addition to being utilized by asylum officers in other protection contexts, the "more likely than not" standard satisfies the U.S. Government's non-refoulement obligations.

Miss RICE. Other Members of the committee are reminded that, under the committee rules—rules, opening statements may be submitted for the record.

Without objection, Members not sitting on the committee will be permitted to participate in today's hearing. Today we welcome our colleague from Texas, Ms. Escobar.

I now welcome our panel of witnesses.

Our first witness, Ms. Laura Peña, is pro bono counsel at the American Bar Association's Commission on Immigration. She is a native of the Rio Grande Valley, and was previously appointed as a foreign policy advisor at the U.S. State Department under the Obama administration, and later served as an immigration trial attorney at the U.S. Department of Homeland Security. Prior to joining the ABA she served as a visiting attorney with the Texas Civil

⁵ USCIS began tracking this information on July 3, 2019.

⁶ USCIS began tracking this information on July 3, 2019.

⁷ USCIS Policy Memorandum PM-602-0169, *Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols*, 2019 WL 365514 (Jan. 28, 2019).

⁸ See INA § 241(b)(3); 8 C.F.R. § 1208.16(b)(2) (same); See 8 C.F.R. § 1208.16(c)(2).

⁹ See 8 C.F.R. § 1208.16(c)(2); Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8480 (Feb. 19, 1999) (detailing incorporation of the "more likely than not" standard into U.S. CAT ratification history); see also *Matter of J-F-F*, 23 I&N Dec. 912 (BIA 2006).

Rights Project to assist family reunification efforts after the zero tolerance policy went into effect last summer along the U.S.-Mexico border.

Our second witness is Ms. Erin Thorn Vela, a staff attorney at the Texas Civil Rights Project who advocates on behalf of immigrants and low-income individuals. Though Ms. Thorn Vela was a front-line volunteer during the family separation crisis last year, much of her recent efforts have focused on assisting asylum seekers forced to wait in Mexico under the Trump administration's Remain-in-Mexico policy.

Next, Dr. Todd Schneberk is an assistant professor of emergency medicine at the University of Southern California, and an asylum clinician with Physicians for Human Rights. He has worked with displaced persons in Tijuana, Mexico for the last 5 years, and performed forensic evaluations for asylum cases on both sides of the border, including on numerous individuals in the Remain-in-Mexico program who are waiting in Tijuana.

We also have Mr. Michael Knowles, the president of the American Federation of Government Employees Local 1924, the CIS Council 119 affiliate representing more than 2,500 USCIS employees in the D.C. region. Mr. Knowles began working with refugee communities in 1975, both in the United States and abroad, in countries such as Afghanistan, Indonesia, and Thailand. He has served as an asylum officer since 1992 but is here in his capacity as special representative for refugees' asylum and international operations, representing the views of the union and its members.

Our final witness this morning is Mr. Thomas Homan, the former acting director of Immigration and Customs Enforcement. Mr. Homan began his career as a police officer in West Carthage, New York, before joining what was then called the Immigration and Naturalization Service. Mr. Homan has since served as a Border Patrol agent, investigator, and eventually an executive associate director. In January 2017, President Trump named Mr. Homan the acting director of ICE, where he served until June 2018.

Without objection, the witnesses' full statements will be inserted in the record.

I now ask each witness to summarize his or her statement for 5 minutes, beginning with Ms. Peña.

**STATEMENT OF LAURA PEÑA, PRO BONO COUNSEL,
AMERICAN BAR ASSOCIATION COMMISSION ON IMMIGRATION**

Ms. PEÑA. Thank you, Chairman—Chairwoman Rice, Ranking Member Higgins, and Members of this subcommittee. My name is Laura Peña. I am pro bono counsel for the American Bar Association Commission on Immigration. I am pleased to testify today on behalf of ABA president, Judy Perry Martinez. Thank you for this opportunity to share our views with the subcommittee.

The ABA is deeply concerned about the Migrant Protection Protocols, also known as Remain-in-Mexico, which discriminates against Spanish-speaking asylum seekers, and deprives them of full and fair access to the American justice system.

We are further concerned about the personal safety of the more than 55,000 asylum seekers who have been subjected to this policy,

and returned to await in dangerous conditions in Mexico, particularly along the Texas border and cities of Juárez, Nuevo Laredo, Reynosa, and Matamoros, the latter in which there is a refugee tent encampment.

To date the ABA is the only non-governmental organization that has had a tour of the Brownsville Tent Court, a soft-sided facility erected near the port of entry, where MPP hearings take place, and which remains closed to the public. I am based in the Rio Grande Valley, and I have represented individuals placed into MPP proceedings. I will briefly identify the primary issues that have led to the erosion of legal protections for asylum seekers under the Migrant Protection Protocols.

First, asylum seekers are being returned to dangerous cities where organizations have documented hundreds, hundreds of incidents of kidnappings and violence. The ABA is concerned that DHS's efforts to comply with its non-refoulement obligations—that is, the legal obligation to refrain from sending refugees to countries where they could suffer persecution or torture—has failed. Asylum seekers must affirmatively request a non-refoulement interview to be removed from the MPP program, placing the burden on the applicant, when it is a legal obligation of the U.S. Government. Moreover, the legal standard is so high that only a small percentage of applicants actually pass the interview to be allowed to pursue their claims in the United States.

Second, the Brownsville Tent Court, a DHS-run facility managed by CBP, serves as a major obstacle to basic due process protections. To appear for their hearings, asylum seekers with early morning hearings travel through dangerous border cities in the middle of the night and have to wait on the bridge before they are processed for their hearing. Once at the tent court, immigration judges, interpreters, and Government counsel appear via video teleconference, while respondents appear at the tent court, most without an attorney.

The technology can be unreliable, leading to disruptive delays that can further traumatize vulnerable asylum seekers. When the technology does function, no simultaneous interpretation is provided during the hearings, with the exception of procedural matters, and as directed by the judge. The procedures for hearings at the tent court result in unfairness and a lack of due process.

The tent court also frustrates meaningful access to counsel. Asylum seekers do have the statutory right to counsel in immigration proceedings. Although there are many attorney-client meeting rooms available in this particular tent court, these rooms are greatly under-utilized, due to restricted access managed by CBP.

Attorneys may enter the tent courts only to appear at the hearing for an asylum seeker the attorney already represents. Attorneys cannot enter this facility to screen potential clients. Once an attorney-client relationship is somehow created, attorneys can only consult with their clients 1 hour prior to the commencement of the hearing on the date of the hearing. Attorneys are often prohibited from meeting with their clients after the end of the hearing, simply to explain what transpired during the hearing where there was insufficient interpretation.

This all means that U.S. lawyers must go to their clients in Mexico, a dangerous proposition that many attorneys will not take. Each time I need to meet with my client I must take precautions to ensure my personal safety while in Mexico. I cross only during the day and must coordinate my visits with humanitarian groups or other colleagues.

During one legal visit into Matamoros, several convoys of heavily-armed Mexican military officials rolled into the refugee encampment. Several U.S. attorneys and humanitarian aid workers evacuated the encampment out of fear that the military would begin forcibly removing the refugees. My legal consultation that day was cut short, and I returned days later to consult with my client again, and had to consult along a narrow sidewalk along the port of entry during a heavy rainstorm, where my client's 4-year-old son was crying because he was scared of the thunderstorm.

This is not meaningful access to counsel, and attorneys should not have to endure such dangerous conditions to fulfil their professional responsibilities. For these reasons, the ABA urges that the Migrant Protection Protocols be rescinded, and that procedures be put in place to ensure fair treatment and due process for all asylum seekers.

Thank you for your time.

[The prepared statement of Ms. Peña follows:]

PREPARED STATEMENT OF LAURA PEÑA

Chairwoman Rice, Ranking Member Higgins, and Members of the subcommittee: My name is Laura Peña and I am pro bono counsel for the American Bar Association Commission on Immigration. Thank you for the opportunity to participate in this hearing on "Examining the Human Rights and Legal Implications of DHS's 'Remain in Mexico' Policy."

Prior to my current position, I have worked at the Department of State on issues relating to Latin America, human rights, and human trafficking; as well as a trial attorney for the Department of Homeland Security, Immigration and Customs Enforcement; at a private law firm specializing in business immigration; and as a visiting attorney at the Texas Civil Rights Project leading family reunification efforts. I also am a native of the Rio Grande Valley of South Texas.

The American Bar Association (ABA) is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The ABA's Commission on Immigration develops recommendations for modifications in immigration law and policy; provides continuing education to the legal community, judges, and the public; and develops and assists in the operation of pro bono legal representation programs.

The ABA is deeply concerned that the Migrant Protection Protocols (MPP), also known as the "Remain in Mexico" policy, discriminate against Spanish-speaking asylum seekers and deprive them of full and fair access to the American justice system, including meaningful access to counsel. We also are concerned about the personal safety of the more than 55,000 individuals who have been subjected to this policy. This concern is not theoretical. We have seen the practical effects of this policy first-hand.

The ABA has 2 pro bono representation projects—the South Texas Pro Bono Asylum Representation Project in Harlingen, Texas and the Immigration Justice Project in San Diego, California—that provide legal assistance to detained adult migrants and unaccompanied children. When MPP began in the Rio Grande Valley this past summer, we initiated an assessment of the issues surrounding the rendering of immigration legal services to this vulnerable population. Based on that assessment, we recently expanded our services to include legal assistance to asylum seekers living in Matamoros, Mexico while their U.S. immigration proceedings are pending.

Traditionally, asylum seekers who entered the United States via the Southern Border, whether at or between official ports of entry, were apprehended by Customs & Border Protection (CBP) and subsequently detained by Immigration & Customs Enforcement (ICE). The asylum seekers remained in detention while presenting their claims for relief or, alternatively, were released into the United States to pursue their claims in regular immigration court.

The establishment of MPP was announced on December 20, 2018 and the Department of Homeland Security began implementation of the policy on January 25, 2019.¹ Under MPP, CBP officials return Spanish-speaking nationals from non-contiguous countries back to Mexico after they seek to enter the United States unlawfully or without proper documentation. In the Rio Grande Valley, DHS returns the great majority of non-Mexican, Spanish-speaking adults and family units who do not have criminal records or immigration histories to Mexico. This includes pregnant women, and members of other vulnerable groups—such as individuals with mental and physical disabilities, and LGBTQ+ individuals—who are supposed to be given special consideration under the program.

Individuals processed under MPP are issued a Notice to Appear (“NTA”) in an immigration court in the United States at a future date, and returned to Mexico until that time, unless they affirmatively express a fear of return to Mexico. If an individual expresses a fear of return to Mexico, an asylum officer conducts a non-refoulement interview² to determine whether she is more likely than not to be persecuted or tortured in Mexico. The policy does not allow attorney representation during these interviews, but at least one Federal court has issued an injunction instructing DHS to allow attorneys access during this critical interview.³ If the asylum officer determines the individual does not show she is more likely than not to be persecuted or tortured in Mexico, the asylum seeker must wait in Mexico during her immigration proceedings, a process that is likely to take months.

The MPP program subjects migrants and asylum seekers to extremely dangerous conditions in Mexican border cities. The Department of State advises U.S. citizens not to travel to Tamaulipas State, where Matamoros and Nuevo Laredo are located, due to “crime and kidnapping.” It has assigned Tamaulipas the highest travel advisory level, Level 4—the same level assigned to countries such as Syria and Yemen.⁴

ABA staff, including myself, have provided legal assistance to MPP asylum seekers, observed MPP hearings, and appeared on behalf of MPP clients. The ABA is committed to ensuring that all individuals are afforded due process rights guaranteed by U.S. law. Based on our experience and observations, the MPP/Remain in Mexico policy fails to comport with fundamental legal protections required under the law.

NON-REFOULEMENT

The ABA is concerned that DHS’s efforts to comply with its non-refoulement obligations do not adequately protect the legal rights of MPP asylum seekers who fear that they will be subjected to persecution or torture in Mexico. The United States is a party to the 1967 Protocol Relating to the Status of Refugees, which incorporates Articles 2–34 of the 1951 Convention Relating to the Status of Refugees.⁵ Article 33 of the 1951 Convention provides that “[n]o contracting state shall expel

¹See Kirstjen M. Nielsen, *Policy Guidance for Implementation of the Migrant Protection Protocols* 1 (Jan. 25, 2019), https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf (“Nielsen Policy Guidance”).

²Generally, a non-refoulement interview is DHS’s procedural attempt to comply with international obligations to refrain from sending refugees back to dangerous countries where they could suffer persecution or torture. See *infra* at page 3 for a legal assessment of non-refoulement interviews.

³The ACLU Foundation of San Diego & Imperial Counties recently filed a class-action lawsuit demanding that MPP asylum seekers who have expressed a fear of return be given access to retained counsel before and during these screening interviews. See *Doe et al. v. McAleenan*, 3:19cv2119–DMS–AGS (S.D. Cal.). On November 12, 2019, U.S. District Judge Dana Sabraw granted the individual plaintiffs’ request for a temporary restraining order, but he has not ruled on the class claims. See Order Granting Motion for Temporary Restraining Order, *Doe et al. v. McAleenan*, 3:19cv2119–DMS–AGS (S.D. Cal. Nov. 12, 2019).

⁴U.S. Dep’t of State, Mexico Travel Advisory, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>. (“Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common. Gang activity, including gun battles and blockades, is widespread. Armed criminal groups target public and private passenger buses as well as private automobiles traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Federal and State security forces have limited capability to respond to violence in many parts of the State.”) (last visited Nov. 17, 2019).

⁵Nielsen Policy Guidance at 3 n3.

or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁶ The United States is also bound by Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”), which provides that “No state Party shall expel, return (“refouler”) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁷ Congress subsequently codified these obligations into law.⁸

Despite widespread danger faced by asylum seekers in Mexico,⁹ DHS does not affirmatively ask individuals subjected to MPP whether they fear persecution or torture if returned there. Where asylum seekers do express a fear of return to Mexico on their own, something they should not be required to do under applicable law, they are supposed to be afforded a telephonic screening interview with an asylum officer.¹⁰ However, asylum seekers do not have the right to consult with counsel before the interview, or to have an attorney represent them in the interview itself. According to DHS only 13 percent of the individuals who have received these screenings have been given positive determinations.¹¹

In addition, to be removed from the MPP program and either be detained or released in the United States, an individual must demonstrate, in the screening interview, that she is more likely than not to be persecuted or tortured in Mexico. This is the same standard as the individual would be required to meet to be granted withholding of removal or relief under the Convention Against Torture by an immigration judge. It also is higher than the standard used for asylum eligibility or for initial interviews in expedited removal and reinstatement of removal proceedings, where asylum seekers are screened to determine whether they will be able to present their claim before an immigration judge.¹² And, unlike in MPP, in those summary proceedings a DHS official must affirmatively ask the individual whether she has a fear of being returned to her home country or removed from the United States.¹³ Individuals also are permitted to consult with an attorney and can be rep-

⁶Protocol Relating to the Status of Refugees, art. I, Jan. 31, 1967, 19 U.S.T. 6223, 6225, 6276.

⁷CAT art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100–20, at 20 (1988).

⁸*I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999) (noting that one of the primary purposes in enacting the Refugee Act of 1980 was to implement the principles agreed to in the 1967 Protocol, and that the withholding of removal statute, now codified at 8 U.S.C. § 1231(b)(3), mirrors Article 33); Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) § 2242(a), Pub. L. No. 105–277, Div. G Title XXII, 112 Stat. 2681 (codified at 8 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”).

⁹Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* 3–8 (Oct. 2019), available at <https://www.humanrightsfirst.org/resource/orders-above-massive-human-rights-abuses-under-trump-administration-return-mexico-policy> (“Orders from Above”) (discussing violence suffered by hundreds of asylum seekers living in Mexican border cities, including rape, kidnapping, and assault); U.S. Immigration Policy Ctr., *Seeking Asylum: Part 2* 3–5, 9–10 (Oct. 29, 2019) (“Seeking Asylum”) (based on interviews with more than 600 asylum seekers subjected to MPP, finding that approximately 1 out of 4 had been threatened with physical violence, and that over half of those who had been threatened with physical violence had experienced physical violence). The numbers reported by the U.S. Immigration Policy Center likely underestimate the dangers faced by asylum seekers subjected to MPP because security conditions in Tijuana and Mexicali, Mexico, where the interviews were conducted, are less dangerous than other parts of the border. *Seeking Asylum* at 9.

¹⁰The ABA is concerned by reports that, even when asylum seekers express a fear of return to Mexico, they often are not provided with the screening interviews required under MPP. See *Seeking Asylum* at 4 (Only 40 percent of individuals who were asked whether they feared return to Mexico and responded in the affirmative were interviewed by an asylum officer, and only 4 percent of individuals who were not asked whether they feared return to Mexico, but nevertheless expressed a fear, were interviewed); *Orders from Above* at 8–9. Reports also indicate that asylum seekers routinely fail to pass these interviews even when they already have been victims of violent crime, including rape, kidnapping, and robbery in Mexico. *Orders from Above* at 10.

¹¹Dep’t of Homeland Security, *Assessment of the Migrant Protection Protocols (MPP)* 5 (Oct. 28, 2019), https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

¹²Individuals placed in expedited removal must show a “credible fear”, or a significant possibility that they could establish eligibility for relief, whereas individuals in reinstatement proceedings must demonstrate a “reasonable possibility” that they are eligible for relief. 8 U.S.C. § 1225(b)(1)(A)(ii), (b)(1)(B)(v); 8 C.F.R. §§ 208.30(e)(3), 208.31(c), 235.3(b)(4).

¹³8 C.F.R. § 235.3(b)(2)(i) (discussing form I–867B).

resented at the interview, and are entitled to immigration judge review of any negative determination.¹⁴ The ABA encourages DHS to implement robust procedures to ensure that asylum seekers who have a genuine fear of persecution or torture in Mexico are removed from the MPP program.

ACCESS TO COUNSEL AND COURT PROCEEDINGS

To ensure that MPP asylum seekers are afforded due process in their immigration proceedings, they must be provided with meaningful access to counsel, and a meaningful opportunity to participate in the proceedings. In our experience, the MPP program endangers these protections.

For asylum seekers returned to the Mexican border cities of Nuevo Laredo and Matamoros, hearings take place in soft-sided tent courts that are adjacent to the International Bridges that connect Laredo and Brownsville, Texas to the Mexican cities of Nuevo Laredo and Matamoros, respectively. ABA president Judy Perry Martinez, along with myself and other ABA staff, toured the tent court in Brownsville, Texas in late August, prior to its opening. To date, we are the only non-governmental organization provided with a tour of the facility. Unlike regular immigration courts, the tent courts are closed to the public, including to members of the media. This is concerning because public access to judicial proceedings helps to further public confidence in the justice system. Even immigration judges are not physically present for hearings that occur at the tent courts; in such hearings the immigration judge and government counsel appear via video conference.

Meaningful access to legal counsel is an essential component of due process, and noncitizens, including those seeking humanitarian protection, have a statutory right to counsel in immigration proceedings.¹⁵ But for MPP asylum seekers, it is nearly impossible to exercise this right from Mexico. During our tour of the tent court facility in Brownsville, we were told that the facility had 60 small rooms for lawyers to meet with their clients; but, in my personal experience, these rooms are not able to be utilized. Attorneys may enter the tent courts only to appear at a hearing for an asylum seeker the attorney already represents. Attorneys are not permitted to enter the tent courts to screen potential clients or provide general legal information about the very hearings in which the asylum seeker will participate. Nor are asylum seekers permitted to enter the United States to consult with their attorneys, other than for 1 hour preceding their scheduled hearings. When I tried to challenge these restrictions in one of my cases, the immigration judge ruled that he did not have jurisdiction to consider my request because the facility is controlled by DHS. On another occasion, I sought access for a legal team to enter the facility to observe a hearing. I was told CBP controls all access to the tent facility. It is troubling that CBP, which is charged with apprehending, detaining, and removing noncitizens, controls when lawyers can access their clients in immigration court. On yet another occasion, members of the ABA Commission on Immigration attempted to observe MPP hearings from where the immigration judges sat at the Port Isabel Detention Center. First, the courts told us DHS had to approve the request. DHS then told us the courts had to approve the request. Only after escalating the issue was the group permitted to observe the hearings.

To render legal services to MPP asylum seekers, U.S.-licensed attorneys either must travel into Mexican border cities, or try to fulfill their professional obligations by preparing complicated asylum cases without a meaningful opportunity to consult in person with their clients. I have faced this dilemma myself. Each time I want to meet with my client, I must take precautions to ensure my personal safety while in Matamoros. I cross only during the day, and try to minimize the length of each visit. I coordinate my visits with humanitarian groups or other colleagues. During one legal visit into Matamoros, several armed convoys of the Mexican military rolled into the refugee encampment of approximately 1,500 individuals and families subjected to MPP. The military officials were heavily armed and showed surveillance equipment on their body armor. Several U.S. attorneys and humanitarian aid workers evacuated the encampment out of fear that the military would begin forcibly removing the refugees. My legal consultation was abruptly cut short, and I returned days later to consult with my client along the narrow sidewalk of the port of entry during a heavy rainstorm. This is not meaningful access to counsel, and attorneys

¹⁴ 8 C.F.R. §§ 208.30(d)(4), (g); 208.31(c), (g).

¹⁵ 8 USC § 1362 (“In any removal proceedings before an immigration judge . . . the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”); 8 USC § 1229a(b)(4)(A) (in removal proceedings, the noncitizen “shall have the privilege of being represented, at no expense to the Government, by counsel of the [non-citizen’s] choosing who is authorized to practice in such proceedings”).

should not have to risk their lives or liberty to fulfill their professional responsibilities. The limited ability to access counsel under these conditions delivers a further harm: Individuals and families subject to MPP may decline to seek legal assistance even when offered because they now fear that they will be singled out or fear for their own safety if they do so.

In Matamoros and other border cities, private attorneys and non-profit organizations have formed groups of volunteers to provide pro se assistance to asylum seekers, but they can only help a small portion of the individuals who need assistance. They face persistent logistical challenges when helping asylum seekers to fill out applications for relief and translate supporting evidence into English. The data confirms that the barriers MPP places on meaningful access to counsel are nearly insurmountable. As of September 2019, only 2 percent of asylum seekers subjected to MPP had secured legal representation.¹⁶

BARRIERS TO MEANINGFUL PARTICIPATION

The hearing process for MPP asylum seekers also does not comport with fundamental notions of due process. MPP asylum seekers are handed notices to appear while in CBP custody in the United States before being returned to Mexico. But because most do not have stable shelter in Mexico, the Government is not able to reliably serve them with notice if their hearing date changes or is canceled. Notices to appear served on MPP asylum seekers often contain addresses of shelters that asylum seekers never access, or no address at all. Paperwork that accompanies the notices to appear instructs MPP asylum seekers to present themselves at international bridges 4 hours before their hearings. For asylum seekers with early morning hearings, this means traveling through dangerous border cities and waiting at bridges in the middle of the night, putting them at even more risk of kidnapping or assault. If they are unable to make the dangerous journey or fail to receive notification of changes in their hearing date, asylum seekers risk being ordered removed in absentia.

In late October, a small delegation of ABA members and staff traveled to our ProBAR project in South Texas for a week-long visit to provide legal assistance to detained migrants at Port Isabel Detention Center, observe MPP proceedings, and provide humanitarian assistance to asylum seekers waiting in Matamoros. During the visit, the group requested to observe a morning session of master calendar hearings for MPP asylum seekers at the Port Isabel Detention Center. After being denied access twice, the group was eventually allowed into the courtroom with the immigration judge, the Government attorney, and the interpreter. The asylum seekers appeared via video from the temporary tent court facility in Brownsville. Approximately 50 asylum seekers were scheduled for hearings that day, but more than 20 of them were not present. Only 3 of the asylum seekers had attorneys. Many of the cases were reset for a later date.

During the hearings, no simultaneous interpretation was provided for MPP asylum seekers who were not fluent in English. Generally, the interpreter, who is present with the immigration judge via video conference, interprets only procedural matters and questions spoken by and directed to the asylum seeker by the immigration judge. The interpreter does not offer simultaneous translation of the entirety of the proceedings. Examples of what is not interpreted include critical information others are able to absorb in the on-going hearing including legal argument by the Government and questions the immigration judge may pose to Government counsel. The ABA has long supported the use of in-person language interpreters in all courts, including in all immigration proceedings, to ensure parties can fully and fairly participate in the proceedings. This is especially important for noncitizens, who are unfamiliar with the U.S. legal system, and face additional unique barriers to accessing information regarding their legal rights and responsibilities. In addition to the lack of full interpretation of the hearing, video conferencing technology can also be unreliable, leading to disruptive delays that can further traumatize vulnerable asylum seekers. In October, when our group observed MPP master calendar hearings, the proceedings started more than 90 minutes late because the internet connectivity at the tent court facility in Brownsville was not functioning.

Even these few examples demonstrate that the conditions and procedures for hearings at the temporary tent courts result in unfairness and a lack of due process for asylum seekers subject to MPP, and create inefficiencies for the immigration court system.

¹⁶TRAC Immigration, “Details on Remain in Mexico (MPP) Deportation Proceedings”, <https://trac.syr.edu/phptools/immigration/mpp/> (last visited Nov. 16, 2019) (showing that, through September 2019, 1,109 of 47,313 MPP cases had legal representation).

DANGEROUS HUMANITARIAN CONDITIONS

Finally, we also have witnessed first-hand the dangerous humanitarian conditions in these border cities. ABA president Judy Perry Martinez, immediate past president Bob Carlson, members of the ABA Commission on Immigration, and ABA staff have crossed the International Gateway Bridge into Matamoros to meet asylum seekers living in a tent encampment steps from the international border. The stories ABA staff have heard are consistent with reports issued by human rights organizations that document dismal conditions, when the stated premise of the MPP program is that the Mexican government would provide humanitarian aid to those in MPP.¹⁷ That aid is obviously not being delivered and the United States, while having delegated the provision of aid, cannot delegate its humanitarian and legal responsibility to these asylum seekers. There also are hundreds of incidents of violence suffered by asylum seekers living in Mexico.¹⁸ To date, there are approximately 1,500 individuals living at the tent encampment in Matamoros, without access to adequate shelter, food, water, or medical care.¹⁹ Subjecting families and individuals who are fleeing violence and persecution to seek protection at our borders to these conditions is inconsistent with our values as a country.

CONCLUSION

The ABA repeatedly has emphasized that our Government must address the immigration challenges facing the United States by means that are humane, fair, and effective—and that uphold the principles of due process. In our experience, the MPP program fails to meet these objectives and creates an unstable humanitarian crisis at our border. We urge that this policy be rescinded and that procedures be put in place to ensure fair treatment and due process for all asylum seekers.

Miss RICE. Thank you for your testimony. I now recognize Ms. Thorn Vela to summarize her statement for 5 minutes.

STATEMENT OF ERIN THORN VELA, STAFF ATTORNEY, RACIAL AND ECONOMIC JUSTICE PROGRAM, TEXAS CIVIL RIGHTS PROJECT

Ms. THORN VELA. Ms. Chairman and committee, thank you for inviting me here to testify about my experience working with individuals that DHS has forcibly removed to Matamoros, Mexico under the Migrant Protection Protocols, or Remain-in-Mexico Policy.

I am a staff attorney at the Texas Civil Rights Project. For the last 2 years I have volunteered and worked with people seeking asylum in the United States. For the last 5 years I have lived and worked along the Texas-Mexico border, and all of my work with asylum seekers is on a pro bono basis.

Since August, I have spent at least 200 hours providing pro bono legal advice to asylum seekers forcibly removed to Matamoros. The horrors in Matamoros are almost endless. I want to share with you the fear, the risks, and the despair that we attorneys and our clients feel every single day.

No one should be in this program. Asylum seekers in Matamoros survive in flimsy tents and under tarps. They do not have adequate food or medicine, because volunteers and a few humanitarian aid groups are the only regular providers of aid. Of the over 1,000 people screened by advocates, more than half report being kidnapped, assaulted, extorted, or raped since being returned to Matamoros.

¹⁷Nielsen Policy Guidance at 2 (quoting from December 20, 2018 statement regarding MPP, which noted the U.S. Government's recognition that Mexico would be implementing protocols "providing humanitarian support for and humanitarian visas to migrants").

¹⁸See note 8, *supra*.

¹⁹Nomaan Merchant, *Tents, stench, smoke: Health risks are gripping migrant camp*, Associated Press, Nov. 14, 2019, <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.

These stories break my heart, but no more than stories of children tortured and assaulted that play over in my mind.

One mother and her small child were kidnapped less than 1 hour after the U.S. Government forcibly returned them to Matamoros. They were tortured for 8 days.

In another case 2 sisters, aged 7 and 9, were sent by our Government to Mexico, and then targeted by a local Mexican national who sexually abused them. Mexican authorities detained this person for 1 night and let him go. He returned to the tents the next day.

Neither we nor our partners have been successful in having even these young victims removed from this program. The fact that the U.S. Government knowingly permits abuse and torture to be the norm sends a strong message. Anyone can target asylum seekers there with impunity and no government will care.

This program design puts people in life-threatening conditions, and we have seen DHS routinely ignore its own safeguards. The agency claims that anyone who has fear of persecution or torture will be taken out of Matamoros, yet almost no one has passed the non-refoulement interview.

The threshold for non-refoulement is required by international law to be low. The person must have a reasonable fear of torture or persecution. I have seen this fear. I have seen asylum seekers shake and break down and sob. Their fears are genuine and confirmed by the U.S. Government's own reports about what is happening in this region. Yet at interviews, asylum seekers report that officers threaten them, ignore them, lie to them, and send them back without any explanation or notice about what has happened in the interview.

DHS's policies say that certain groups of particularly vulnerable people should be categorically barred from being sent to the streets of one of the most dangerous areas in the hemisphere. Some are people with physical disabilities that are apparent by just looking at the person. We have seen cancer survivors, pregnant women, and children with autism and Down's Syndrome who are still in the camp today.

We represent a deaf non-verbal woman. Not once was she given an interpreter for any interaction with Federal officers, a blatant violation of her civil rights. Because she is non-verbal, she could not even scream for help when her family was being followed by two men. At the end of her first week there, DHS admitted it had erred in placing her in the program. However, it took presenting her 3 times to the bridge director, a demand letter, and the threat of litigation to get her taken out of Matamoros.

What would have happened if we hadn't had been there? Why won't the agency fix these violations of policy and of law that place particularly vulnerable people in harm's way?

We constantly find people who should be protected under the agency's own policies. I listened with horror as a lesbian woman in the camp told me that men had punched her in the face and threatened to rape her to turn her straight. This woman's story is not an anomaly for the LGBT people that we work with.

I am horrified that all I can say to asylum seekers in Matamoros is this: Hold on and stay safe. That statement feels so empty when I know how often people are kidnapped directly from their tents,

abused, and tortured. It haunts me when I walk back across that bridge to the United States that I have only these words to console my clients.

They should be able to seek safety in safety. That safety is their right by international treaty, the Constitution, and the core principles of our humanity that are enshrined in our immigration laws.

Thank you for your time.

[The prepared statement of Ms. Thorn Vela follows:]

PREPARED STATEMENT OF ERIN THORN VELA

NOVEMBER 19, 2019

Thank you for this opportunity to testify about the Department of Homeland Security's Remain in Mexico Policy. The implementation of this unlawful policy has destroyed any semblance of due process in removal proceedings. The processes developed under the Remain in Mexico Policy serve to persecute—not protect—thousands of asylum seekers, becoming the next in the wave of continued attacks against the international right to seek asylum by the Trump administration. I thank the committee for inviting me to share the stories of asylum seekers subjected to one of the worst humanitarian crises that we and our partnering immigration and civil rights advocates in the Rio Grande Valley have ever seen.

My testimony this morning is based on my work as a staff attorney at the Racial and Economic Justice Program at the Texas Civil Rights Project (“TCRP”), a non-governmental and non-profit organization.¹ We are Texas lawyers and advocates for Texas communities, serving the rising movement for equality and justice. Our Racial and Economic Justice Program fights against discriminatory policies and practices based on immutable characteristics and immigration status. Along the Texas-Mexico border, our team works tirelessly to defend landowners whose land the Federal Government seeks to condemn to build a border wall, bring separated families back together, and ensure that the civil rights of immigrants are a reality. Through litigation, education, and advocacy, TCRP has fought for almost 30 years to ensure that the most vulnerable communities in our State can live with dignity and free from fear.

With this testimony, my hope is to bring to Congress the capricious, discriminatory, and punitive manner in which the Trump administration is implementing the Remain in Mexico policy to dismantle the fundamental human right to seek asylum.

I. DISMANTLING THE RIGHT TO ASYLUM

People arriving at the U.S.-Mexico border have a right to petition for asylum. The U.S. Government cannot lawfully enact a forcible transfer program that strips a person of that right. Yet, when asylum seekers arrive at the border in the Rio Grande Valley, the Government now forcibly transfers them to a dangerous place in a process that disregards any fundamental due process rights. This forcible transfer program is the most recent in a long series of efforts by the Trump administration to dismantle the right to seek asylum.

A. The Right to Seek Asylum is Established, Binding, and Fundamental

The right to seek asylum is a core human right and a central principle of immigration laws. It is enshrined in Article 14 of the 1948 Universal Declaration of Human Rights, a document created when last there were this many people seeking safety across the globe.² The Universal Declaration of Human Rights provides that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.” To protect that right, 146 countries—including the United States—signed the 1967 Protocol Relating to the Status of Refugees. In 1980, Congress codified the United States’ obligation to receive persons “unable or unwilling to return to” their home countries “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”³

¹ Texas Civil Rights Project, <https://texascivilrightsproject.org/about-us/>.

² Press Release, *Global Forced Displacement Tops 50 Million for the First Time Since World War II—UNHCR Report*, UNHCR (June 20, 2014), <https://www.unhcr.org/en-us/news/press/2014/6/53999cf46/global-forced-displacement-tops-50-million-first-time-since-world-war-ii.html>.

³ 8 U.S.C. §§ 1101(a)(42), 1158(b)(1).

These and other laws prohibit also the United States from returning asylum seekers to countries where they face persecution or torture.⁴ This right to non-refoulement is incorporated into United States law. The United States cannot remove an individual to any country when the person's "life or freedom would be threatened" due to persecution.⁵

A state that sets up an agreement to send asylum seekers to a third country will violate its non-refoulement obligations unless the agreement meets certain standards. The agreement must be formal and enforceable, provide procedural safeguards for every individual, and permit appeals.⁶ A state "cannot en masse transfer asylum seekers to a third country to await asylum processing."⁷ A state must create a screening process—prior to transfer—that allow each person to present their views on aspects such as risk factors in the receiving country, to maintain family unity, and to screen for any threat of persecution.⁸ UNHCR has emphasized that the threshold in these screenings must be low enough to prevent refoulement.⁹ The burden is on the state to screen for refoulement, not the asylum seeker to affirmatively claim fear of persecution.¹⁰ The United States would violate its international obligations if the Government created a transfer agreement that did not include any of these elements.¹¹

The reality on the ground is that the United States is violating each of these obligations through its implementation of the Remain in Mexico Policy.

B. Government Policies Prevent Asylum Seekers from Seeking Safety

From what I and my colleagues at TCRP have personally witnessed, the Remain in Mexico program is part of the pattern to dismantle the right to seek asylum.

Since 2017, we have seen how the Trump administration has callously enacted multiple policies that deter black and brown migrants from seeking protection in the United States. In 2017, at the administration's very beginning, it sought to issue a "Muslim Ban," a discriminatory policy that kept families apart on the basis of their religion.¹² The Trump administration formalized the "Turnback Policy," also known as "metering," requiring CBP officers to directly or constructively keep asylum seekers from entering the United States, such as by claiming the processing centers were "full."¹³ In some cases, officers have sworn to our clients that the facilities are "full" only to later swear before a judge that those facilities were empty.¹⁴ In 2018, the Trump administration began a secret "pilot project" in Texas to separate migrant children from their families.¹⁵ TCRP began to document the family separations here in McAllen. For the past year-and-a-half, TCRP has met thousands

⁴Article 33 of the 1951 Convention Relating to the Status of Refugees—which the United States is bound to comply with—provides: No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Similarly, Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—to which the United States is also bound—provides: No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

⁵8 U.S.C. § 1231(b)(3)(A) (The five protected grounds are race, religion, nationality, membership in a particular group, or political opinion).

⁶Brief for the United Nations High Commissioner for Refugees in Support of Appellees' Answering Brief at 11–12, *Innovation Law Lab v. McAleenan*, 394 F.Supp.3d 1168 (S.D. Cal. 2019) (No. 19–15716).

⁷Id. at 17.

⁸Id. at 18.

⁹Id. at 19.

¹⁰Id. at 20.

¹¹Id. at 22.

¹²See Executive Order 13,760, *Protecting the Nation from Foreign Terrorist Entry into the United States* (Jan. 27, 2017); Executive Order 13,780, *Protecting the Nation from Foreign Terrorist Entry into the United States* (Mar. 06, 2017); & Presidential Proclamation 9,645, *Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats* (Sept. 24, 2017).

¹³See *Al Otro Lado v. McAleenan*, 394 F.Supp.3d 1168, 1187, 1208 (S.D. Cal. 2019).

¹⁴Customs and Border Protections officials testified under oath that, as of early September 2019, CBP facilities in the Rio Grande Sector were at 30 percent capacity. Transcript of Oral Argument at 40–41, *Rosa v. McAleenan*, 2019 WL 5191095 (S.D. Tex. 2019).

¹⁵U.S. GOV'T ACCOUNTABILITY OFFICE, *UNACCOMPANIED CHILDREN: AGENCY EFFORTS TO REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER*, GAO–19–163, 15–16 (Oct. 2018).

of separated parents and seen their struggles to seek safety when their children were and continue to be used to punish the parents.¹⁶

In December 2018, the Department of Homeland Security announced the “Migration Protection Protocols,”¹⁷ known colloquially as the “Remain in Mexico” Policy. In January 2019, the policy was started in California, then rolled out along the border in phases. Around the end of July 2019, the Government started forcibly removing asylum seekers who arrived in the Rio Grande Sector to Matamoros, Mexico. By the end of September 2019, the Government had forcibly transferred more than 10,000 people to Matamoros,¹⁸ making it the location with the second-largest population to be subjected to the Remain in Mexico program.¹⁹

C. Seeking Safety from a Life-Threatening Situation

In the Rio Grande Valley, the Remain in Mexico program sparked a humanitarian crisis that is rapidly worsening. This crisis was foreseeable. Indeed, given what we know about Matamoros, it was practically inevitable. Matamoros does not have the infrastructure to receive thousands of people. It has few shelters,²⁰ let alone housing that is appropriate to keep safe people at-risk of kidnapping, trafficking, and abuse.²¹ The city has inadequate water and medical services.²²

Disturbingly, the U.S. State Department lists the area as a “Level 4,” the highest travel advisory warning, due to the prevalence of kidnapping and other violent crimes.²³ Advocates and service providers, such as TCRP, Team Brownsville, Angry Tías and Abuelas, Project Dignity, Lawyers for Good Government, and others, must disregard the risks to our lives to represent asylum seekers there. Migrants waiting in Matamoros must constantly navigate these dangers.

In Matamoros, we support our partners who run a pro bono legal clinic to help asylum seekers prepare their refugee applications for the port court. To-date, approximately 1,100 asylum seekers have signed up for the legal clinic. Of those, more than half reported that, since the U.S. Government forcibly transferred them, they have been kidnapped, assaulted, extorted, raped, or experienced other types of violent crime.²⁴ The following are just 3 examples of what asylum seekers forced into the Remain in Mexico program have suffered in Matamoros:

“The U.S. Government forcibly transferred an El Salvadoran mother and her 4-year-old son to Matamoros in the evening and released them at 1 am. Suddenly homeless, they walked to the refugee tents. Less than 1 hour after they were released, an organized criminal group kidnapped them. For the next 8 days, the mother and child were tortured, deprived of food, water, and sleep, sexually abused, and threatened with dismemberment and death.

“While in Mexico trying to flee to the United States, a young Nicaraguan man was kidnapped. He was released. Yet, when the U.S. Government forcibly returned him

¹⁶ LAURA PEÑA, *THE REAL NATIONAL EMERGENCY: ZERO TOLERANCE & THE CONTINUING HORRORS OF FAMILY SEPARATION AT THE BORDER*, TEXAS CIVIL RIGHTS PROJECT (Feb. 2019), <https://texascivilrightsproject.org/wp-content/uploads/2019/02/FamilySeparations-Report-FINAL.pdf>.

¹⁷ Department of Homeland Security, *Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration* (Dec. 20, 2018), <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>. The Government’s implementation of its Remain in Mexico policy came months after the family separation policy was found to be unconstitutional. Former National security experts have raised serious concerns about the “unsupported claims” upon which the administration has used to justify the Remain in Mexico Program. Brief for Former U.S. Government Officials Amici Curiae in Support of Appellees and Affirmance at 13, *Innovation Law Lab v. McAleenan*, 394 F.Supp.3d 1168 (S.D. Cal. 2019) (No. 19–15716).

¹⁸ Id.

¹⁹ TRAC Immigration, <https://trac.syr.edu/phptools/immigration/mpp/>.

²⁰ Doctors Without Borders, *US Migration Policy Endangers Lives of Asylum Seekers in Tamaulipas State* (Sept. 06, 2019), <https://www.msf.org/us-migration-policy-endangers-lives-asylum-seekers-tamaulipas-state-mexico>.

²¹ In the 2019 Trafficking in Persons Report, the State Department found that groups most vulnerable to trafficking were “women, children, indigenous persons, persons with mental and physical disabilities, migrants, and LGBTI individuals.” U.S. STATE DEPARTMENT, *TRAFFICKING IN PERSONS REPORT: MEXICO* 236 (2019).

²² Id.

²³ State Department, Mexico Travel Advisory, (Apr. 9, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

²⁴ Human Rights First has documented similar stories and frequencies of kidnapping, torture, and rape in multiple locations where people are subjected to the Remain in Mexico Policy and similar refusals to remove people from the Remain in Mexico program after they are victimized. *HUMAN RIGHTS FIRST, ORDERS FROM ABOVE: MASSIVE HUMAN RIGHTS ABUSES UNDER THE TRUMP ADMINISTRATION RETURN TO MEXICO POLICY* 8 (Oct. 2019).

to Matamoros, he was kidnapped from the refugee tents 2 days later. He was tortured. When he was released, the hospital had to stitch together the crisscross of cuts on his arms.

“A family from Honduras and their 2 daughters—ages 7 and 9 forcibly transferred to Matamoros. There, the girls were targeted by a pedophile and sexually abused. The parents reported the person to the Mexican authorities. The Mexican authorities detained the person for 24 hours, then released him. Unprotected by the authorities, the girls continue to be at-risk of abuse.”

U.S. officials denied each of these individual’s non-refoulement interviews, despite the risk to their lives. Each developed serious health issues. Yet, the U.S. Government refuses to remove them from Matamoros.

The Trump administration has stripped legal pathways to safety, driving more people to cross the border illegally. As policies to bar asylum seekers stranded many in Mexico, desperate people make desperate choices. I have counseled asylum seekers with incredibly strong claims—struggling to survive the horrible realities of Matamoros—who ask themselves every day whether crossing the border is worth it. These are law-abiding people who cannot wait for months in an area like Matamoros for one simple reason: If they do, they will likely die.

II. ARBITRARY LIFE-AND-DEATH DECISIONS IN VIOLATION OF THE AGENCY’S POLICIES, CIVIL RIGHTS STATUTES, AND THE CONSTITUTION

A. *Conditions in Matamoros*

First, I want to share the conditions in Matamoros. Nobody can better capture the experiences of the people we represent than the people themselves. Here is one of our client’s experiences in the words he wanted to share with Congress members:

“After spending 7 days in a freezing cold cell, sleeping on the concrete floor, with the lights on 24 hours a day, I was boarded on a bus along with other migrants. When we descended from the bus, a Mexican official informed us that we were in Matamoros, Mexico, and that the United States had placed us in the MPP or Remain in Mexico program. That was the first time I had heard of the program or my placement in it.

“During my 100 days in Matamoros, I have been extorted and assaulted physically and verbally due to my migrant status and sexual orientation. I live in constant fear of organized crime, by a group who call themselves the ‘Gulf Cartel’. I have been sleeping on the street, surviving the heat of the day and cold of the night. I have explained the abuses I have suffered to 2 U.S. asylum officials. Both informed me that, while they had compassion for my situation, they were not authorized to allow me to seek safety in the United States.

“How has MPP affected me? It has made me feel abused, dejected, humiliated, abandoned, confused, disoriented, mistreated, and fearful.”

—A.E.C.L., an LGBTQ Guatemalan asylum seeker in the Remain in Mexico Program in Matamoros.²⁵

Asylum seekers in Matamoros survive incredibly difficult situations without adequate shelter, food, medical attention, or other basic necessities. The general list of life-threatening conditions can feel endless to those of us who witness the bravery and resilience of people in Matamoros:

- After being forced out of the United States, asylum seekers are delivered into Matamoros with little other than the clothing on their backs;
- Many survive homeless, either in the plaza in one of the hundreds of thin and flimsy tents or in informal arrangements to sleep in a crowded private room;
- Food aid in Matamoros is mostly provided by Team Brownsville, a volunteer group that feeds hundreds of people a day. Children show signs of severe malnutrition;
- Children have no access to education;
- In the city, there are few medical services for these migrants, although Doctors Without Borders and local doctors work tirelessly. Many asylum seekers have already experienced severe trauma, conditions often exacerbated in the tents where they survive. There simply are not enough doctors to treat them;
- There is inadequate water and sanitation, placing people at-risk of preventable diseases; and
- Asylum seekers are kidnapped, assaulted, tortured, and extorted while they wait for their day in court.

²⁵ We have not provided our clients’ names due to concerns for their safety.

These examples are the norm, not the exception. The Government's decision to send someone to Matamoros is a life-and-death decision for the almost 10,000 people sent there—a number we believe will be much higher now.²⁶



One of many children without adequate clothing
© Texas Civil Rights Project 2019



Asylum-seekers trying to get food aid in Matamoros
© Texas Civil Rights Project 2019

B. The Unlawful Placement of Particularly Vulnerable Groups in Matamoros

On December 20, 2018, then-DHS Secretary Nielsen announced the Remain in Mexico policy, a policy to be implemented consistent with “domestic and international legal obligations.”²⁷

Several guidance documents lay out the core implementation features of the Remain in Mexico program, including which migrants are “amenable” to be forcibly returned to Mexico.²⁸ Representatives of DHS stated that immigration officers may exercise their discretion to forcibly return only those migrants determined “amenable” to the Remain in Mexico program.²⁹ However, as representatives stated, DHS determined that certain groups of people were categorically ineligible to be placed in the Remain in Mexico program, including unaccompanied children or migrants with “known physical or mental health issues.”³⁰ These people were not “amenable” to the Remain in Mexico program.³¹ Additionally, in July 2019, the agency sent a letter to Representative Grijalva to “reiterate DHS’s commitment to the responsible implementation of this program as it applies to all populations, including LGBTQ asylum seekers and other vulnerable populations.”³² On the ground in Matamoros, the reality has starkly contrasted with the agency’s stated policy.

In August 2019, I began to meet and be contacted about people with apparent disabilities who the U.S. Government had subjected to Remain in Mexico and forcibly sent to Matamoros.

In September 2019, I met B.G.P., a deaf and non-verbal woman who the Government had forcibly transferred to Matamoros with her mother, minor sister, and young child. CBP officials had already violated many of B.G.P.’s civil rights. Officials never provided her a translator or any other aid so she could effectively communicate with the Government agents. One day, CBP officers arrived at the detention cell that they had placed her in at around 4 in the morning and tried to force her on the bus. They did not tell her that she would be sent to Mexico. Although B.G.P.’s mother pleaded that her daughter would face danger and discrimination, the officers told the mother to lie back down and refused to provide a non-refoulement interview. Luckily, medical staff intervened and persuaded officers to return B.G.P. and her young child to the cell with her mother and sister. Two days

²⁶ TRAC Immigration, <https://trac.syr.edu/phptools/immigration/mpp/> (based on the charging document issued by DHS, data shows 10,646 people subjected to have their case heard in the “MPP court” in Brownsville across from Matamoros as of September 2019).

²⁷ Department of Homeland Security, *Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration* (Dec. 20, 2018), <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

²⁸ Office of Field Operations, San Diego Field Office, *Guiding Principles for Migrant Protection Protocols*, (Jan. 28, 2018), <https://www.cbp.gov/sites/default/files/assets/documents/2019Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

²⁹ *Innovation Law Lab v. McAleenan*, Brief for Appellants, 2019 WL 2290420 *13 (N.D. Cal. 2019).

³⁰ *Id.*

³¹ *Id.*

³² Letter from James W. McCament, Deputy Under Secretary of Office of Strategy, Policy, and Plans of the Department of Homeland Security, to the Honorable Raul M. Grijalva (July 19, 2019).

later, without warning or explanation, officers again came in the early morning to take B.G.P. and her whole family to Matamoros.

Once in Matamoros, B.G.P. and her family struggled with homelessness, food insecurity, lack of medical care, and discrimination. They were followed by men to the place they stayed and the men left only when neighbors intervened on their behalf.

In September 2019, another advocate introduced us to B.G.P. She tried to present B.G.P. to the port officials for a re-determination of her placement in the Remain in Mexico program. Port officials agreed that the placement was an error. Nevertheless, the agent refused to re-process B.G.P. The officer first stated B.G.P. would have to travel back to where she had originally entered, regardless of the fact that the State Department warns against any travel there. Then, the officer said that the processing facility was full. After the advocate explained that the officer had discretion to parole the family in, the officer just refused, without giving a reason or alternative.

On B.G.P.'s behalf, we again presented her to ask for parole or, alternatively, a non-refoulement interview. We were not permitted to be present for the interview. B.G.P.'s mother said that, before the interview started, the officers told the group of people there for interviews that they would be sent back to Mexico no matter what. In the interview, the agency again violated its own regulations, refusing to provide an interpreter or other aid for B.G.P. After just an hour-and-a-half, B.G.P. and her family were sent back to Mexico. B.G.P.'s mother cried all night.

We next drafted a legal complaint, which we included with a demand letter to the agency. Only then was the family paroled into the United States. Even after agents admitted DHS broke its own policy, it took over a month and the threat of legal action for the agency to fix their violation of their policy. Our organization is small. We cannot represent the many people with disabilities who should not be placed in the program, so these violations are wide-spread and on-going.

Since then, TCRP staff and our partners have met many other particularly vulnerable people whom the U.S. Government has sent back to Mexico. Here are some examples:

- Two children with Down syndrome were sent to Matamoros. The Government has paroled one of these children. While in Mexico, the other child was kidnapped, held for ransom, and released. The Government still has not paroled that child;
- A child with a recently amputated leg was not given medical treatment, but sent back to Matamoros. The child is now hiding in a shelter that forbids visits, even from lawyers, due to safety risks;
- A 2-year-old child has severe epilepsy. As their medication is not available in Matamoros, the child suffered seizures that drastically impacted their brain;
- A forcibly-removed person with cancer now cannot find treatment in Matamoros;
- A 38-week pregnant woman was forcibly given medicine to stop her contractions so the Government could remove her to Mexico. She gave birth to her child in a tent and, after, suffered severe post-partum depression that went untreated; and
- At least 12 LGBTQ people were sent to Matamoros, where many face physical and verbal abuse, such as death threats and threats of "corrective" rape. After multiple non-refoulement interviews, only 1 transgender individual was paroled.

Under the agency's own policies, none of these people should have been forcibly removed to Mexico in the first place. Yet, many spent and continue to spend months in dangerous conditions in Matamoros. I know that advocates filed complaints with DHS's Office of Civil Rights and Civil Liberties about similar cases. There are not enough lawyers willing to risk their lives to screen people in Matamoros, so there are likely many more people with similar health and safety issues that we have not yet met. The agency says it categorically excludes particularly vulnerable groups; the reality shows otherwise, revealing an arbitrary and capricious system.

C. The Refusals to Remove People Who Have Become Vulnerable

Due to the conditions in Matamoros, many people who may not initially be considered categorically excluded from the Remain in Mexico policy become too vulnerable to remain in Matamoros. Over the past months, there has been no story more emblematic for us than this one:

"A toddler was subjected to Remain in Mexico with her family. While unaccompanied children should be categorically excluded, the government routinely sends families back who have small infants or toddlers. This toddler was already so malnourished that she looked like an infant.

"On November 13, 2019, after spending time in Matamoros, she developed signs that showed she likely had sepsis. As her joints swelled and she became listless,

her family rushed her to get her treatment, contacting our partner with an office in Matamoros. With supplies too limited to treat the child, a volunteer emergency room doctor went with the family and our partner to the bridge to confirm to U.S. officials that the child had a serious medical condition and needed to instantly be taken to a hospital in the United States.

“Federal officers kept the family standing on the bridge for around 3½ hours in the freezing rain. They refused to permit the family to wait in the processing center. They refused to let the family stand in an area on the bridge where they would not be in the rain. The two officers refused to even allow the family to move the child close to the heater that was behind the agents.

“Stuck on the bridge, in freezing and rainy conditions, our partner reached out to us for help. TCRP instantly responded, amplifying their situation through our social media to allies. Soon, the agents let the family in. The child was hospitalized and is in serious condition.”³³

We have seen other threats as well. For example, parents are now threatened by the Mexican government with family separations paralleling those that our Government carried out.³⁴ The uncertainty and fear that asylum seekers face in these moments can cause further emotional trauma. We see new risks develop every day that make people vulnerable to severe health issues.

In our experience, people can rapidly develop serious health issues in Matamoros. When someone becomes too vulnerable to remain in Matamoros, agents are too slow to respond to the sudden, severe medical or safety needs of the person. I have seen how our clients have become severely at-risk because port-of-entry officials are uncoordinated at best and, at worst, try to mislead advocates about what is necessary to parole people into the United States.

D. Unethical and Discriminatory Treatment by DHS Officials at the Border

Throughout the past month, myself and our partners have witnessed various unethical and discriminatory behaviors by CBP officials, such as incidences where CBP officials:

- Threatened to report as terrorists those asylum seekers who petitioned for a non-refoulement interview;
- Told asylum seekers that the asylum seekers could complete the non-refoulement interview but, regardless of the outcome, the officers would still send them back to Mexico;³⁵
- Used homophobic slurs to refer to LGBTQ asylum seekers;
- Forced an indigenous young woman to translate for official Government interviews all-day without providing her food, breaks, or pay;
- Tried for 5 hours to pressure an indigenous family to conduct a non-refoulement interview in Spanish, a language that they do not speak. Officers kept threatening that, if the family did not do the interview in Spanish, then the family would be forcibly returned to Mexico without receiving a non-refoulement interview.

I have witnessed the psychological toll that this behavior has taken on asylum seekers. For example, although B.G.P.’s family was unlawfully placed in the program, their treatment by CBP officers at the port of entry caused both B.G.P.’s minor sister and mother to suffer severe panic attacks that required hospitalization. Other asylum seekers have despaired, considering giving up their strong asylum claims, afraid that they would face retaliation by CBP officials.

E. Abuses Against Lawyers Assisting Asylum Seekers

For the past 3 months, TCRP lawyers and our partners have tried to save lives by advocating for the most vulnerable people in Matamoros. I spoke with our partners about how they have been treated as they endeavored to serve asylum seekers

³³ This story was reported on by local news. See Valerie Gonzalez, *Sick Honduran Toddler Admitted into US After Hours-Long Wait*, KRGV (Nov. 14, 2019), <https://www.krgv.com/news/honduran-child-treated-after-emergency-arises-while-waiting-on-int-l-bridge>.

³⁴ Reynaldo Leños, *Mexican Official Tries to Move Asylum-Seekers Stuck in Tent Camps*, NPR (Nov. 09, 2019), <https://www.npr.org/2019/11/09/777686672/mexican-official-tries-to-move-asylum-seekers-stuck-in-tent-camps>.

³⁵ BuzzFeed has stated it recently obtained a report in which a DHS investigation found that CBP officers sometimes interfered with USCIS officer’s ability to determine whether an asylum seeker should be excluded or removed from the Remain in Mexico program on the basis of fear of persecution or torture. Hamed Aleaziz, *US Border Officials Pressured Asylum Officers to Deny Entry to Immigrants Seeking Protection, A Report Finds*, BUZZFEED (Nov. 14, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/dhs-asylum-report-mpp-immigration-remain-mexico>.

subjected to Remain in Mexico. They shared that Federal officials at the Brownsville-Matamoros port of entry have:

- Told lawyers that CBP processing facilities were too full to process their client after having sworn in court shortly beforehand that the facilities were empty;
- Told lawyers that a supervisor was not present when the supervisor was clearly visible;
- Misled lawyers that an asylum seeker needed to go before an immigration judge and refused to correct their erroneous opinion that a judge was necessary to permit them into the processing center;
- Ordered lawyers to leave before the lawyers could return paperwork to their clients and then become visibly hostile when lawyers asked how to return the paperwork; and
- Grabbed a lawyer by their backpack and shoved them.

As lawyers, civility is at the core of our profession, even as we zealously advocate for our clients. To protect the rights of those people whom the Government has forcibly transferred, myself and my colleagues enter into some of the most dangerous areas on this continent: The State Department has issued a Level 4 Travel advisory to Tamaulipas, an advisory that is given for countries like Afghanistan, Syria, and Yemen. One of our partners has been threatened 3 times in Matamoros and continues to receive threats via phone and email. Lawyers rapidly left Matamoros at least 3 times due to safety concerns. Some partners developed “extraction” protocols to manage the risks, such as carrying safety whistles and taking pictures of volunteers before entering to have in case someone is kidnapped. To do our jobs and to keep safe, we need to be able to rely on the honesty and civility of Federal employees.

Sadly, the reality is this: Most of our partner lawyers told me that they had been worried about their safety at various times due to the actions of Federal officials. The concern that Federal employees will harm us or lie to us makes an already difficult job that much tougher, deterring people from joining the already small group of lawyers willing to enter Matamoros.

III. RECOMMENDATIONS

As advocates on the ground for more than 30 years, TCRP’s expertise spans decades of administrations and policies. In the Rio Grande Valley, never before have we seen such cruel policies. Organizations and volunteers were already expending tremendous effort to respond to the attacks on asylum; now, we spread ourselves even further to make sure asylum seekers have at least some services and legal advice. As one of our partners said, this work is “soul-crushing.”

I have seen the resilience of the people in Matamoros. An overwhelming sense of community permeates the refugee tent encampment. People watch out for each other. Single mothers group their tents so they can help each other with the children. They sleep in rotations so that someone is awake to notice if anything is happening. As a person, I am horrified that all I can say to them is to hold on and stay safe, a statement that feels empty when I know how often people are kidnapped, abused, and tortured.

The Remain in Mexico Policy is not a cornerstone of a reformed immigration system. Instead, this policy shatters the right to asylum, creating a chaotic, capricious, and un-Constitutional crisis. This humanitarian crisis threatens the lives of tens of thousands of people who are attempting to seek safety in safety and sets a horrific precedent on the international stage.

In light of the above, we recommend that Congress take the following steps:

1. Conduct searching oversight about the degradations of asylum due to Remain in Mexico, such as the conditions in Mexico, the failure to exclude particularly vulnerable groups, the lack of due process or open access to port courts, and the impact of the transit ban. Efforts could include further committee hearings, a select investigative committee, Congressional visits to Mexico and the port courts, oversight letters, resolutions of inquiry, and requests for inspections by the inspectors general.
2. Visit Matamoros and other areas where people subjected to RIM are forcibly transferred and request meetings with port of entry directors to discuss administrative processes for discretionary removals from Mexico.
3. Adopt formal expressions of censure or condemnation for officials overseeing the Remain in Mexico policy for failing to follow the vulnerable group protections.
4. Foster transparency by making public all policies and guidance related to the program. Publish data on the use of discretionary removals by region and disaggregated by gender identity, age, country of origin, and vulnerabilities.

5. Provide emergency, life-saving aid to asylum seekers, including funds for USAID programs and legal representation.
6. Pass legislation to end the Remain in Mexico policy.

Miss RICE. Thank you for your testimony. I now recognize Dr. Schneberk to summarize his statement for 5 minutes.

STATEMENT OF TODD SCHNEBERK, MD, ASSISTANT PROFESSOR OF EMERGENCY MEDICINE, CO-DIRECTOR, HUMAN RIGHTS COLLABORATIVE, KECK SCHOOL OF MEDICINE OF THE UNIVERSITY OF SOUTHERN CALIFORNIA; ASYLUM NETWORK CLINICIAN, PHYSICIANS FOR HUMAN RIGHTS

Dr. SCHNEBERK. Thank you for the opportunity to speak. My name is Todd Schneberk. I am an emergency physician in Los Angeles, California. I also provide care in Tijuana, Mexico, to indigent patients, many of whom have been deported from the United States, including young people and some veterans.

Today I speak as a medical expert for Physicians for Human Rights. For more than 30 years PHR has carried out forensic evaluations that assess the degree to which physical and psychological findings corroborate allegations of abuse and play a key role in the adjudication of asylum claims in the United States.

My work has changed dramatically since the Trump administration rolled out MPP, and my colleagues and I now face an increasing demand to carry out these forensic evaluations across the border. As a medical expert I regularly witness the dire impacts of MPP, and I am here to share my assessment that this program should be halted and de-funded immediately.

First, I would like to share how my medical assessment of the state in which thousands of asylum seekers arrive at the border. In February of this year I was part of a PHR team that documented the cases of asylum seekers in Tijuana. These findings later formed the basis of a PHR report entitled, "If I Went Back, I Would Not Survive." We medically evaluated dozens of asylum seekers who share harrowing stories of extreme brutality, and whose physical and psychological scars bore out their narratives. Not surprisingly, the majority screened positive for post-traumatic stress disorder. Many screened positive for depression, experiencing significant fear and hyper vigilance.

I would like to share some of the examples of the physical and psychological signs and symptoms that PHR's medical team documented among asylum seekers at the U.S. border. All names have been changed for security reasons.

Jimena, a 21-year-old mother from Honduras, who was raped because her husband refused to join a gang, told us how armed men entered her house, threw her face down on the kitchen floor. One of the men held her down, while the other man raped her. She described her physical state afterwards: "I had bruises on my shoulders where they held me down. I had pain in my abdomen for 3 days and in my stomach throughout my pregnancy. It hurt to sit down." PHR medical experts noted signs of severe depression and hyper vigilance. Having to wait in Tijuana only compounded her fear and anxiety.

Perhaps the most distressing cases PHR documented concerned children. Antonio, an 8-year-old Honduran boy, was attacked by 2

paramilitary men with a machete. Since the attack his parents told PHR that he cries often and must hold his mother's hand to be at ease. Since they arrived in Tijuana, Antonio defecates in his bed and suffers from nightmares where he yells, "Mom, hurry, hurry. The guy is going to kill us." Antonio himself reported symptoms of PTSD and anxiety disorder, as well as somatization, whereby a psychological distress manifests as physical ailments and attention problems. As most asylum seekers stuck in Tijuana, Antonio did not have access to mental health care, or adequate medication, or therapy for his attention deficit hyperactivity disorder, which likely exacerbated his condition.

Since the completion of PHR's investigations, I have completed—I have participated in multiple forensic evaluations of MPP returnees through our network of both Mexican and U.S. physicians and attorneys. Here are snapshots of some of these cases.

Alec is a Honduran evangelical pastor who was assaulted multiple times and shot in the leg for opposing gangs trying to recruit youth. Gang members then raped his wife, threatening that it would keep happening unless he left the area. Alec fled after his wife was raped a second time. In addition to his physical scars, Alec screened positive for depression and PTSD. Although he was granted asylum in immigration court, it was immediately appealed.

Martin is a young man who fled Honduras due to pressure to join a gang. He was diagnosed with epilepsy as a boy, for which he was prescribed a combination of medications. After being forced to wait in Tijuana, Martin suffered several seizures that caused significant head and facial trauma. Although a charity helped him find medications, U.S. border officials confiscated these every time he crossed into the United States to attend his hearings, despite medical letters from myself and others attesting to the importance of these medications.

While I continue to work with MPP returnees in Tijuana, I also provide emergency care in Los Angeles. Like any other doctor, I first try to make the patient feel safe and in control of their environment, so that we can comfortably discuss and address their needs and fears. For the thousands who wait in Tijuana, however, the standard of safety and basic health needs are impossible to meet.

Since this program began in February, I have seen first-hand how MPP puts the mental and physical health of asylum seekers at grave risk, harming a population that has already experienced severe levels of trauma. The stress and constant vigilance required to survive in an under-resourced border town like Tijuana exposes these asylum seekers to further violence and exploitation. Each day that they are forced to wait compounds the trauma that forced them to seek safe haven.

I urge Congress to take action by directing DHS to immediately de-fund MPP and abolish metering, as well as any policies that negatively impact the right to seek asylum or risk re-traumatization of this vulnerable population, such as programs intended to authorize officials other than trained USCIS asylum officers to conduct credible fear interviews.

I also urge Congress to pass new legislation to safeguard against policies or directives that effectively restrict individuals' access to asylum protection in the United States.

Thank you.

[The prepared statement of Dr. Schneberk follows:]

PREPARED STATEMENT OF TODD SCHNEBERK

NOVEMBER 19, 2019

Thank you for the opportunity to speak here today. My name is Todd Schneberk and I am an emergency physician who works in a large public county hospital taking care of underserved populations in Los Angeles, California. In addition to my clinical work, I conduct research and teach in a residency-training program as assistant professor of emergency medicine at L.A. County USC Medical Center. For the last 4 years, I also have been working on the other side of the U.S.-Mexico border, in Tijuana, in free mobile clinics for indigent patients, including many people who have been deported from the United States. Many of these deportees are young people and veterans.

Today I speak as a medical expert for Physicians for Human Rights (PHR). For more than 30 years, PHR has provided forensic evaluations for asylum seekers in the United States. Based on the Istanbul Protocol¹—the international standard for documenting alleged torture and other cruel, inhuman, and degrading treatment—these forensic evaluations assess the degree to which physical and psychological findings corroborate allegations of abuse, and play a key role in the adjudication of asylum claims in the United States.

In the last 3 years, I have provided dozens of forensic medical affidavits for asylum seekers and I have trained several other physicians and residents in Los Angeles to perform these evaluations and produce affidavits. However, my work has changed dramatically this past year, ever since the Trump administration rolled out the Migrant Protection Protocols, also known as MPP or the “Remain in Mexico Policy.” With thousands of people now waiting in Mexico for a chance to seek asylum in the United States, my colleagues and I face an increasing demand to carry out these forensic evaluations on the other side of the border, and we have been doing so in Tijuana.

The Department of Homeland Security (DHS) has stated that the MPP was created so “vulnerable populations receive the protections they need.”² However, the MPP clearly puts asylum seekers at risk and violates the principle of non-refoulement, which simply states that countries, including the United States, cannot return asylum seekers to a place where they could be subjected to great risk, irreparable harm, or persecution.³ The requirements of non-refoulement should not be new to the United States, given that it is included in U.S. domestic law,⁴ as well as the Convention against Torture,⁵ which the United States has signed and ratified.

As a medical expert, I regularly witness the dire impacts of the MPP. I am here today to share my assessment that the MPP—which daily puts migrant women, children, and men directly in harm’s way—should be halted and defunded immediately. I have seen how the MPP puts the mental and physical health of asylum seekers at grave risk, allowing harm to be inflicted upon a population that has already experienced severe levels of trauma. Many of the people we see have escaped extreme violence in their countries of origin. Instead of finding the safety they so

¹ The Istanbul Protocol is the international standard to assess, investigate, and document alleged instances of torture and other cruel, inhuman, and degrading treatment. “Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment,” OHCHR, 2004. <https://phr.org/issues/torture/international-torture/istanbul-protocol.html>.

² “Migrant Protection Protocols,” DHS, news release, January 24, 2019, accessed July 15, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

³ *The Principle of Non-Refoulement under International Human Rights Law*, OHCHR, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

⁴ Title 8—Aliens and Nationality, U.S. Code (2011), § 1158. Asylum. Page 109.

⁵ David Weissbrodt and Isabel Hortreiter, “The Principle of Non-Refoulement: Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties,” *Scholarship Repository: University of Minnesota Law School*, 1999, https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty_articles.

desperately seek, they are forced back into under-resourced border towns like Tijuana, where they are exposed to further violence and exploitation. Each day that asylum seekers are forced to wait in these precarious settings compounds the massive trauma that forced them to flee their homes to seek safe haven within our borders. This situation can quite literally be a threat to their lives.

PHYSICAL AND PSYCHOLOGICAL HEALTH OF ASYLUM SEEKERS

First, I would like to share my medical assessment of the state in which thousands of asylum seekers arrive at our ports of entry. In February this year, I was part of a PHR team of researchers and medical experts who documented the cases of asylum seekers in Tijuana. These findings later formed the basis of a PHR report named “If I went back, I would not survive.”⁶

At migrant shelters and other safe havens, we interviewed and medically evaluated dozens of asylum seekers who shared harrowing stories of the extreme brutality they had experienced in their home countries—and whose physical and psychological scars bore out their narratives. These individuals and families were fleeing various forms of extortion, rape, torture, and killings. Not surprisingly, the majority screened positive for post-traumatic stress disorder (PTSD). Additionally, many screened positive for depression and also experienced significant fear and hypervigilance. Many were afraid they had been followed to the border by the very gangs they had fled, and some had been attacked even as they waited in Tijuana for their chance to cross to safety into the United States. Returning traumatized asylum seekers who are already in a particularly vulnerable situation to a place where they risk further violence directly violates the United States’ commitment, under international and domestic law, to uphold human rights.

While I’m sure that these accounts are not new to you, I would like to share some of the physical and psychological signs and symptoms that PHR’s medical team documented among asylum seekers at the U.S. border. (All names I refer to throughout this testimony have been changed for security reasons.)

Javier,* a 36-year-old man who was extorted and beaten by a gang in El Salvador, reported symptoms of PTSD, severe depression, and anxiety. His inability to sleep led to physical exhaustion and lack of focus. He also felt constantly on guard and watchful. He told PHR, “Having seen so much violence, sometimes I start shaking . . . a kind of fear,” he said. “My body begins shaking and I go cold.”

Jimena* is a 21-year-old mother of 2 from Honduras who was raped because her husband refused to join a gang. She told us how armed men entered her home and threw her face-down on the kitchen floor. As she fought back, one of the men held her down while the other man raped her. She described to PHR her physical state afterwards: “I had bruises on my shoulders where they held me down. I had pain in the abdomen for 3 days and in my stomach throughout the pregnancy; it hurt to sit down.” Throughout PHR’s medical evaluation, Jimena demonstrated signs of severe depression and hypervigilance. Having to wait in Tijuana only compounded her fear and anxiety.

Perhaps the most distressing cases PHR documented concerned young children. In Tijuana, we interviewed Antonio,* an 8-year-old Honduran boy who was attacked by 2 men with a machete after his parents ran afoul of the local paramilitaries. Before the ordeal, Antonio’s favorite school subject was writing, and he enjoyed playing ball with his friends. Since the attack and his family’s flight to the border he has become sad and cries often. His parents told PHR that he holds his breath when he is afraid and often must hold his mother’s hand to be at ease. Since he arrived in Tijuana, Antonio also defecates in his bed and suffers from nightmares where he yells in his sleep, “Mom, hurry! Hurry! The guy is going to kill us!” Antonio himself reported symptoms of PTSD and anxiety disorder as well as somatization, whereby psychological distress manifests as physical ailments and attention problems.

As most asylum seekers stuck in Tijuana, Antonio did not have access to mental health care. His parents also did not have access to adequate medication or therapy for his attention deficit hyperactivity disorder, which likely exacerbated his condition. When reflecting on what the future held for her son, Antonio’s mother said, “I still don’t see it [ending] . . . I want my children to be OK in a safe place . . . but we have not found that [safety] yet. Our hope is that they will give us asylum, so my kids will be safe on the other side.”

⁶“If I went back, I would not survive.” Asylum Seekers Fleeing Violence in Mexico and Central America, Physicians for Human Rights, October 2019, https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america/#_ftnref61.

THE IMPACT OF THE MIGRANT PROTECTION PROTOCOLS (MPP)

Asylum seekers who arrive at U.S. ports of entry—including many bearing serious psychological and physical consequences of the trauma they have suffered—are now met at our border with the Migrant Protection Protocols—a brutal response to their appeal in good faith to await the processing of their asylum claim within the safety of the United States. Since the completion of PHR's investigations, I have participated in multiple forensic evaluations of MPP returnees through a network of both Mexican and U.S. physicians and attorneys who serve this population. As my colleagues today will speak to other aspects of the implementation of the MPP, I would like to provide a series of short snapshots of some of the cases for which I have provided my medical expertise. I want it to be crystal clear who the people are that are being returned to Mexico under the MPP.

Gerald is a gay schoolteacher from Ghana, which still has a law that criminalizes adult consensual same-sex conduct. When local community members discovered that he was gay, they tied a noose around his neck and dragged him by it behind a car. His larynx was crushed so badly that he had nearly lost his voice completely. He now speaks in a hoarse, barely audible whisper, in stark contrast to the booming voice he reported using to teach his 4th-graders at school. Gerald still bears ligature marks on his neck. Despite his strong claim for asylum, he has been unable to find legal counsel in Tijuana and struggles to make a viable life there while he waits.

Alec is a Honduran evangelical pastor who organized youth groups and a Christian anti-gang movement that opposed the recruitment of youth. One day, gang members assaulted him multiple times and ultimately shot him in the leg. They told Alec to stop trying to influence young men to join the church instead of the gangs. Gang members then raped his wife, with the ultimatum that this would keep happening unless he left the area. Alec fled after his wife was raped a second time. In addition to his physical scars, Alec was profoundly psychologically wounded, screening positive for depression and PTSD. Although he was initially granted asylum in immigration court, this decision was immediately appealed.

Martin is a young man from Honduras who was beaten for refusing to join a gang. At a young age, he was diagnosed with epilepsy, and had seizures repeatedly until he was finally placed on a combination of medications. He fled to the border but was unable to find the right medicine for his seizures when he was in Tijuana. Martin then suffered several seizures that caused significant head and facial trauma and also made him unable to keep a job there. Although a local charity helped him find medications, these were confiscated by U.S. border officials every time he crossed into the United States to attend his hearings, despite medical letters attesting to the importance of these medications. Each time he was returned to Mexico under MPP, he was sent back across the border without his medications, which posed a risk to his health.

Lydia is a woman from Honduras who is seeking asylum with her toddler, Jaime, and hoping to be reunited with her sister and niece who reside in the United States. She is fleeing domestic abuse, kidnapping, child abuse, and rape at the hands of gang members. Upon reaching Tijuana, she was alerted through her family connections that the gang had sent members to Tijuana to kill her. Lydia and her son remain indoors for fear of being seen. They have had difficulty finding any legal counsel; Jaime does not have access to routine pediatric care, and Lydia has had no access to mental health assistance to address the trauma of the sexual violence she suffered.

CONCLUDING REMARKS

These 4 cases represent a small fraction of the roughly 50,000 asylum seekers⁷ have been returned to Mexico under MPP. Another 26,000 wait, due to metering practices that limit the number of people allowed to cross every day, to pursue their legal right to seek safety in the United States for themselves and their family members. This is a total of 76,000 people affected by these 2 policies alone.

While I continue to return to Tijuana to provide MPP returnees with needed medical and psychological evaluations, I also continue to provide care to traumatized people every day in the emergency room in Los Angeles. Like any ER doctor, the first thing I do is try to make a patient feel safe. I control their environment as much as possible so that we can comfortably discuss and address their needs and fears. For the thousands who wait in Tijuana, however, this standard of safety is not being met; nor is access to basic medical and mental health needs. These needs

⁷“Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy,” Human Rights First, October 2019, <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

include things like prenatal, obstetric, and routine pediatric care, such as vaccines and nutritional screening, but also expands to mental health services which are so desperately needed by this population.

This is especially true as our evaluations of the mental health of asylum seekers show that U.S. policies have stranded thousands of women, men, and children in places like Tijuana and made them vulnerable to violence, theft, and extortion by cartels, gangs, and police authorities. Clearly, current U.S. policies that restrict asylum seekers' right to enter the United States is inflicting further trauma on them every day they must wait. The stress and constant vigilance required to survive in an under-resourced border town like Tijuana is a massive strain on already traumatized people. It harms their livelihood and well-being and is literally a threat to their lives.

RECOMMENDATIONS

All asylum seekers we interviewed sought protection due to targeted violence and intimidation from gangs and other non-state actors as well as violence by and/or denied protection by state authorities. While they represent a small sample of the thousands of asylum seekers currently waiting their turn to seek protection in the United States, their cases indicate that they have strong grounds to seek asylum and that their claims should be heard in a prompt and fair manner.

While the Obama administration implemented troubling policies regarding detention and deportation, since 2016, the Trump administration has undermined the integrity of the U.S. asylum system, introducing a series of restrictive policies that defy both international and U.S. law and egregiously obstruct the right to seek asylum. These policies—including the Migrant Protection Protocols—have placed people who are already in vulnerable situations—asylum seekers fleeing violence and trauma in their home countries—at further risk. Physicians for Human Rights' findings point to the urgent need to protect the right of individuals to seek asylum in accordance with Federal and international laws by implementing the following recommendations.

Congress should:

- Direct the Department of Homeland Security to immediately abolish and defund the MPP and “metering,” as has already been proposed in Representative Veronica Escobar’s Asylum Seeker Protection Act (H.R. 2662).
- Defund any policies that may negatively impact the right to seek asylum, such as pilot programs intended to authorize law enforcement officials other than trained U.S. Citizenship and Immigration Services (USCIS) asylum officers to conduct initial screenings known as “credible fear interviews” (CFIs).
- Propose and pass new legislation to affirm the full range of rights guaranteed to asylum seekers to counteract any executive or Departmental policies or directives that effectively restrict individuals’ access to asylum protection.
- Provide adequate funding to ensure USCIS has sufficient resources to appropriately conduct CFIs.
- Publicly support the work of individuals and organizations defending the rights of asylum seekers on the U.S. and Mexican sides of the border and monitor any threats to their ability to carry out this work.
- Pursue policies that seek to create a safe, stable environment for asylum seekers to fulfill their right to pursue their asylum claims within the protection of the United States, and that meaningfully guard against the re-traumatization of this vulnerable population.

Miss RICE. Thank you, Doctor. I now recognize Mr. Knowles to summarize his statement for 5 minutes.

STATEMENT OF MICHAEL A. KNOWLES, PRESIDENT, AFGE LOCAL 1924, SPECIAL REPRESENTATIVE AFGE NATIONAL CIS COUNCIL 119

Mr. KNOWLES. I wish to thank the committee for giving me the opportunity to testify here today.

I want to reiterate that I am here in my capacity as the union representative for USCIS employees, and not in my official capacity as an asylum officer. I am not authorized to speak on behalf of the agency, but I speak on behalf of our members.

I have an extensive written statement, which is submitted for the record, and I would like to draw attention to some of the exhibits, one being our amicus friend-of-the-court brief that we submitted in the 9th Circuit in June in support of a lawsuit brought against DHS on its MPP policy, and we extensively document the objections of our members to this policy in that amicus brief.

We have also submitted a very important news story, documents regarding the much-publicized resignation of one of our asylum officers from San Francisco, Mr. Douglas Stephens. He was the subject of some news stories in both print and in the radio over the last weekend, and we have included the transcript of the radio broadcast and his own statement of resignation, in which he outlines legal objections.*

We just want to say for the record that the union stands firmly behind Mr. Stephens and other asylum officers who have bravely raised their voices.

As indicated in my bio, I am well-acquainted with this field, having served as an asylum officer since 1992, the second year of the program's inception, and before that worked for many years abroad. I am well-acquainted with crisis. I am well-acquainted with conflict, having worked in war zones ranging from Vietnam to Cambodia, Afghanistan, and refugee camps across western and southeast Asia, as well as refugee camps here in the United States.

I mention that because many of my asylum officer colleagues are just like me, they bring extensive experience, they are subject-matter experts in the field. They were hired by the Government to conduct some of the most difficult and complicated work of the Immigration Service, and they do so proudly as patriotic citizens and public servants. Many of them are attorneys. Many of them have advanced degrees and extensive experience in the human rights field.

We are very dismayed that statements by this administration's leadership, our own agency leadership, has disparaged this loyal work force, and going so far as to question their integrity, their competence, and their loyalty to the United States. I ask that this committee, regardless of party or inclination on this matter, would do its utmost to uphold the good name and the loyalty of these brave men and women.

My colleagues here on the panel have eloquently testified to the effect of these programs on the migrants and asylum seekers. I am here today to talk about the effect, the very serious effect, on the officers that have to carry out the work.

Many of them have expressed their concerns internally, some publicly, all in good conscience, none out of disloyalty. We have had disparaging remarks indicating that they just don't agree with policies, or that they are politically motivated. We categorically deny those allegations. We are nonpartisan, professional civil servants. We took an oath to uphold the Constitution and laws of the United States. Our objection to the policies like MPP, which is only one of many egregious policies that are being implemented, our objections are based in our oath and in our commitment to uphold the law.

* Attachments 1-3 have been retained in committee files.

These policies are blatantly illegal, they are immoral, and, indeed, are the basis for some egregious human rights violations by our own country.

We have been threatened with retaliation, with investigations of leakers and whistleblowers. We have had some of our members threatened with discipline and, most shockingly, we witnessed the precipitous removal of Mr. John Lafferty, the chief of the asylum program, who is one of the most highly respected civil servants I have had the honor to serve with. He was summarily dismissed and transferred with no explanation.

I have no insight into that action, but my members and I have reason to believe it was because of his devotion to the program, to its integrity, and to its work force, and he was seen as an obstacle to carrying out some of these policies.

So in closing, I would ask this committee to have more hearings like this. We need more exposure of these situations.

MPP is only one of many serious abuses in this field. We filed a brief on the so-called third-country transit bar. As you have read in the news, we are on the eve of yet another egregious abuse by our country, whereby asylum seekers will be transported to have asylum cases heard in Guatemala, not by our own country, but by a country that produces many refugees itself.

Our officers are dismayed. They are—they remain committed to the job. But they ask me to implore this committee to please intervene, to put a stop to this injustice.

Thank you for your time, and I look forward to answering your questions.

[The prepared statement of Mr. Knowles follows:]

PREPARED STATEMENT OF MICHAEL A. KNOWLES

NOVEMBER 19, 2019

Chairwoman Rice, Ranking Member Higgins, and other Members of the subcommittee: Thank you for inviting me to submit this statement for the record.

INTRODUCTION

I have proudly served in the United States Asylum Officer Corps since 1992, 1 year after its creation. Prior to that, I served for many years as a case worker, program manager, and policy analyst with various non-governmental organizations responsible for refugee protection, resettlement, and humanitarian assistance in the United States and abroad (Afghanistan, Cambodia, Indonesia, Pakistan, Malaysia, Singapore, and Thailand).

I appear here in my capacity as the special representative for refugee asylum and international operations for the National Citizenship and Immigration Services Council 119 of the American Federation of Government Employees (AFGE)—the labor organization that represents over 13,500 bargaining unit employees of the U.S. Citizenship and Immigration Services (USCIS) world-wide. As special representative, I report directly to the council president, Danielle Spooner, on all matters related to asylum and refugee matters.

Concurrently, I serve as the elected president of AFGE Local 1924—the Council 119 affiliate that represents 2,500 USCIS employees in the National Capitol Region. My views represent the Union and its members. They are not official positions of the U.S. Government.

Today's hearing shines critical Congressional light on the Migrant Protection Protocols (MPP) "Remain in Mexico" policy rolled out by the Trump administration this year. I expect my co-panelists to produce significant evidence demonstrating why MPP is an unmitigated disaster for everyone involved. My testimony focuses on how MPP is affecting—and hurting—my fellow Asylum Officers, who must either carry out orders and run the program they reasonably believe violate the law and endanger asylum seekers or leave their jobs.

Unless otherwise noted, my testimony is based on public source information. In particular, I recommend to the subcommittee the report published late last week by the office of U.S. Senator Jeff Merkley (D-OR).¹ It describes the extensive efforts by the Trump administration to deter and prevent asylum seekers from legally claiming asylum within the United States. It also reveals how programs like MPP are part of a larger, systematic effort undermining the functioning of the U.S. asylum system. I urge you to review its detailed findings and adopt its recommendations.

ABOUT ASYLUM OFFICERS

To begin, my Union has taken and continues to take stands against policies we consider illegal. We actively support our members who exercise their lawful rights to report abusive policies, programs, and practices to Congress and other agencies, as well as their first amendment rights.

We have filed Amicus Curiae briefs in 4 major court cases challenging the Trump administration's illegal and dangerous policies regarding the U.S. Refugee and Asylum programs: (i) The 2017 travel ban that suspended most overseas refugee processing; (ii) the MPP policy; (iii) the substantive changes to USCIS training and guidance materials for Asylum Officers; and (iv) the so-called "third-country transit bar"—the insidious rule barring migrants arriving at the Southern Border from receiving asylum if they transited through a third country and did not apply for and were denied asylum while there.² Because of the relevance of our MPP Amicus brief to today's hearing, it is attached here as Exhibit 1 and is incorporated into my testimony.

Asylum Officers have tough jobs. We make decisions that have life or death consequences. Most of us consider the work a calling; we make significant personal sacrifices to carry out the Nation's founding mission—to serve as a beacon to the persecuted across the globe. Frankly, the job takes its toll—even in the best of times.

But we are now far from the best of times. Since the start of the current administration, policies and procedures have been imposed that I and many of my colleagues believe to be illegal. More importantly, they are fundamentally wrong and threaten to shred the moral fabric of our society.

WHAT ASYLUM OFFICERS DO

For good reason, we are focused today on the Southern Border. There, Asylum Officers are the ones who have to decide in an initial screening interview whether persons seeking refuge in the United States have shown a credible fear of persecution in the countries from which they have fled. By law, the standard we apply at this early stage in the asylum process is a low one—intended to weed out patently false allegations and identify those who have a significant possibility of making a valid asylum claim. If they pass our screening, they then proceed to Federal immigration court. They are not returned to the dangers they face in the countries from which they are fleeing—consistent with the obligation of non-refoulment that are enshrined in our laws and ratified international treaties. The screening is intended to be a "safety net;" it is not a final adjudication of asylum claims.

In immigration court, a judge conducts a full hearing of the evidence and applies a higher standard: Whether the evidence shows that the individual has suffered past persecution or has a well-founded fear of future persecution in their home countries.³ The standards applied by Asylum Officers and immigration judges are not the same. The passing rate in immigration court is, by design, far lower.

¹ *Shattered Refuge—A U.S. Senate Investigation into the Trump Administration Gutting of Asylum* (Nov. 2019), available at <https://www.merkley.senate.gov/imo/media/doc/SHATTERED%20REFUGEE%20Gutting%20of%20Asylum.pdf> (Merkley Report).

² *Trump v. International Refugee Assistance Project*, Nos. 16–1436 & 16–1540 (S.Ct.) (2017 travel ban Amicus brief filed Sept. 7, 2017); *Innovation Law Lab v. McAleenan*, No. 19–15716 (9th Cir.) (MPP Amicus brief filed June 26, 2019); *Kiakombua v. McAleenan*, No. 19–cv–01872–KBJ (D.D.C.) (USCIS training and guidance materials Amicus brief filed Sept. 20, 2019); *East Bay Sanctuary Covenant v. Barr*, No. 19–16487 (9th Cir.) (third country transit bar Amicus brief filed Oct. 15, 2019).

³ Congressional Research Service (CRS), *Asylum and Related Protections for Aliens Who Fear Gang and Domestic Violence*, 2 (2018).

WHAT NOW HAPPENS UNDER MPP

MPP turns the process upside down. Now, many asylum applicants are referred to the immigration courts by Customs and Border Patrol (CBP) Agents without a credible/reasonable fear screening by USCIS Asylum Officers—but are first returned to wait on the Mexico side of the border, pending their court hearings. It is no secret that the towns and cities at the Southern Border are among the most dangerous in Mexico—the State Department warns everyone not to travel to the region around Matamoros, for instance, because carjacking, and sexual assault are common, gang gun battles are wide-spread and it has one of the highest kidnapping rates in the country.⁴ Yet applicants are made to wait in Mexico unless they affirmatively assert a fear of serious harm and can prove to an Asylum Officer under the higher, “more likely than not” standard that they would face persecution in that country. Now, over 57,000 refugees have been returned to wait in perilous conditions in Mexico under this cruel policy.

The dangers of waiting in Mexico under MPP were graphically illustrated this past weekend on an episode of the This American Life podcast/radio show devoted to MPP. A transcript is attached as Exhibit 1.⁵

- One woman from Honduras, who has been waiting in Matamoros for 3 months for her court date said she, her husband, and daughter were kidnapped by a Mexican cartel for 15 days.
- In Nuevo Laredo, across the Rio Grande from Laredo, Texas, kidnapping is so prevalent that men living inside a shelter for migrants are terrified to go outside. One family from Honduras, a father and 11-year-old son, were kidnapped and held for ransom for 4 days. According to the father, on the day of the kidnapping he and 100 other asylum applicants sent back under MPP, were taken from the international bridge crossing the Rio Grande to the local Mexican immigration office for processing. After that a man wearing a Mexican immigration officer uniform agreed to take him and his son to the bus station so they could go to a safer city. But as soon as they got to the station the father and son were grabbed and taken to a normal-looking house holding more than 20 other migrants. While there, the boss told the father that his son’s organs were good for selling because he was only 11 years old. The father and son were released after the father’s sister paid a ransom, by wiring the money to a bank account connected to the Mexican immigration officer.

Other reporting has similarly documented wide-spread violence and inhumane conditions facing migrants stranded in Mexico.⁶

ACTION BY ASYLUM OFFICERS AND THEIR UNION

In the face of this my Union, its members and other USCIS employees have not been idle. Here are 3 recent examples of tangible action in opposition to MPP. And to be clear: Hundreds of current and former USCIS employees share the views expressed through these actions.

Union Action: Lawsuits.—Based on the kind of horrific reports described above (along with many others), my Union argues in our Amicus brief supporting the challenge to MPP, attached as Exhibit 1, that the policy is contrary to America’s long-standing tradition of providing safe haven to people fleeing persecution, and that it violates our Nation’s legal obligations to not return asylum seekers to where they may face persecution. In our Amicus brief supporting the challenge to the Trump administration’s transit bar we argue that it is inconsistent with our asylum law and that it is contrary to the Nation’s long-standing asylum framework and produces absurd results.

Individual Action: Documented Resignation.—Brave Asylum Officers have done much more. In the last 7 days alone, Senator Merkley disclosed and the *Washington*

⁴U.S. Department of State, *Mexico Travel Advisory* (April 9, 2019), available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁵This American Life, *The Out Crowd*, Episode 688 (Air Date Nov. 15, 2019), transcript available at <https://www.thisamericanlife.org/688/transcript>.

⁶See, e.g., Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* (Oct. 2019), available at <https://www.humanrightsfirst.org/sites/default/files/hrordersfromabove.pdf> (“More than one thousand children, families, and adults are sleeping on the streets in front of the Matamoros port of entry without adequate access to water or proper sanitation, too afraid to enter the city because of the extreme violence there. An American nurse, visiting as a volunteer, told Human Rights First researchers that many of the children were suffering from diarrhea and dehydration.”); *Los Angeles Times*, Molly O’Toole, *Borderline: Trump’s Immigration Crackdown*, *Los Angeles Times* (August 5, 2019), available at <https://www.latimes.com/politics/story/2019-08-05/borderline-trumps-immigration-crackdown>.

Post, CNN, the *Los Angeles Times* and *This American Life* reported on an Asylum Officer in San Francisco who resigned rather than participate in MPP.⁷

As recounted on *This American Life*, in June 2019, Doug Stephens was assigned to MPP interview duty. His first interview was father-and-son asylum applicants from Honduras. The father described encountering criminal cartels, witnessing other migrants being murdered and tortured, fleeing and barely getting away while death threats are being shouted at him. And the father said they had been stopped by the police—who took their money and cell phones. But the father failed to say the magic words: “they threatened me because I’m Honduran.” Doug sent them back to Mexico—under MPP protocol the father had to state, flat-out, those words. He hadn’t.

Two days and 4 interviews later, Doug had had enough. A trained lawyer, he researched the law and identified 7, separate legal problems with MPP. He told his supervisor he would do no more MPP interviews. The supervisor said that Doug would be subject to discipline and that disciplinary proceedings would begin. USCIS management’s position is that their lawyers have said MPP is legal (notwithstanding pending legal challenges), that Doug received a “lawful” order to work on MPP, and that Doug’s refusal to follow a lawful order constituted insubordination.⁸

Doug responded by drafting a legal memorandum that he initially sent to USCIS management justifying his decision. He also sent the memo to Senator Merkley’s office and to the Union. The Federal Whistleblower Protection Act allows Federal employees to lawfully make such disclosures to Congress (as well as the Office of Special Counsel, to the agency’s inspector general and to agency employees designated to receive such disclosures).⁹ After receiving no response from management, he quit. On his last day, he sent his memorandum to the 80 employees in the San Francisco Asylum office.

Doug’s memo is reprinted in Senator Merkley’s report and a copy is attached here as Exhibit 2.¹⁰ He points out that MPP is not supported under existing law, was illegally implemented without following required Federal rulemaking procedures and violates international law. He states:

- [T]he MPP both discriminates and penalizes. Implementation of the MPP is clearly designed to further this administration’s racist agenda of keeping Hispanic and Latino populations from entering the United States. This is evident in the arbitrary nature of the order, in that it only applies to the Southern Border. It is also clear from the half-hazard implementation that appears to target populations from specific Central American countries . . .
- [I]t is a punitive measure intended to punish individuals who attempt to request protection in the United States.
- [T]he MPP practically ensures violation of our international obligation of non-refoulement.
- [The MPP] process places on the applicants the highest burden of proof in civil proceedings in the lowest quality hearing available. This is a legal standard not previously implemented by the Asylum Office and reserved for an Immigration Judge in a full hearing.
- [E]ven if all the above were remedied, the process is still morally objectionable and contrary to the [USCIS Asylum Office] mission of protection. The Asylum

⁷ Merkley Report, at 51–52; *Washington Post*, Greg Sargent, *In Scathing Manifesto, An Asylum Officer Blasts Trump’s Cruelty to Migrants* (Nov. 12, 2019), available at <https://www.washingtonpost.com/opinions/2019/11/12/scathing-manifesto-an-asylum-officer-blasts-trumps-cruelty-migrants/>; CNN, Priscilla Alvarez, *Senate Report: Whistleblowers Blast Trump Administration’s Immigration Policies* (Nov. 14, 2019), available at <https://www.cnn.com/2019/11/14/politics/merkley-asylum-report/index.html>; *Los Angeles Times*, Molly O’Toole, *Asylum Officers Rebel Against Trump Policies They Say Are Immoral and Illegal* (Nov. 15, 2019), available at <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>; *This American Life*, *The Out Crowd*, Episode 688 (Air Date Nov. 15, 2019), transcript available at <https://www.thisamericanlife.org/688/transcript>. See also Vox, Dara Lind, *Exclusive: Civil Servants Say They’re Being Used as Pawns in a Dangerous Asylum Program* (May 2, 2019), available at <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit>.

⁸ *This American Life* recorded acting head of USCIS Ken Cuccinelli saying: “I do expect that the professional employees at USCIS will implement the policies in place. They’re part of the Executive branch, and so long as we’re in the position of putting in place what we believe to be legal policies that haven’t been found to be otherwise, we fully expect them to implement those faithfully and sincerely and vigorously.”

⁹ See 5 U.S.C. 2302(c)(2)(C)(iii).

¹⁰ At the time he sent his memo to Senator Merkley, Doug was identified an anonymous whistleblower. He later decided to identify himself in reporting by the *Los Angeles Times* and *This American Life*.

Office would still be complicit in returning individuals to an unsafe and unreasonable situation.

I understand that Doug will be submitting today for the record today written testimony. Council 119 stands firmly behind his insightful statements. Should additional hearings be held we believe that you will find him a most compelling witness.

Union Action: Public Media.—I and other Union leaders have exercised our First Amendment rights to express our opinions on behalf of our members. For instance, in a *Washington Post* opinion article submitted on behalf of our Union, Local 1924 vice president and union steward Charles “Chuck” Tjersland said: “the standards for demonstrating [fear of waiting in Mexico] are almost impossibly tough. When I went to San Ysidro, Calif., to conduct interviews for [MPP], I spoke with people whose heartbreaking stories, I knew, wouldn’t be good enough.”¹¹ He went on to say:

“When I started working as an asylum officer more than 26 years ago, it seemed like a dream job. At the time, hundreds of thousands of Central Americans were fleeing horrific political repression by their governments, which had the backing of the United States. I was a law student in Washington, working at an aid center for recent immigrants. Most of my friends and colleagues were pretty skeptical of the Federal Government. But I thought that this could be a way to help people, while fighting for what I thought America should be: A beacon of freedom, offering refuge to those in need.

“The Trump administration’s policies have turned the process into a Kafkaesque nightmare. My colleagues and I have interviewed thousands of asylum seekers from Guatemala, El Salvador, and Honduras and told them that they had to return to Mexico while their cases were processed—knowing all the while that they might be kidnapped, assaulted, or killed. Under MPP, also known as ‘Remain in Mexico,’ we’re not allowed to let them stay here. We’re forced to put them back in danger.”

Chuck was subsequently interviewed by Steve Inskeep, the host of National Public Radio’s (NPR’s) *Morning Edition*.¹² Again speaking in his capacity as a Union leader he said:

- INSKEEP: Do you get messages from your superiors, explicit or implicit, to basically send everyone to Mexico?
TJERSLAND: It’s implicit. It’s not—there’s no explicit order saying that. But by rigging the standards as has been done, that’s exactly how it comes across.
- INSKEEP: Is there a story of someone you sent back to Mexico that you had trouble getting out of your head when you went home that night?
TJERSLAND: Oh, yeah, yeah, yeah. I mean, not knowing where, you know, where, you know, a man or a woman was going to be keeping their children safe, literally—where are they going to be?
- INSKEEP: Would she ask you, what am I supposed to do when I get to Mexico?
TJERSLAND: Well, you know, this is my—these are the questions we’re supposed to ask. We’re supposed to ask, so if you were to go back today, where would you be going? Where are you going to go? And they’re really—they are at their wit’s end. They’re saying, the shelter is full. We’ve been told we can’t go back there.
- INSKEEP: Do you have colleagues who’ve quit?
TJERSLAND: We’ve had colleagues that have quit. We’re driving away some of the brightest minds, most motivated hearts. Many still remain. Don’t get me wrong. But it’s really a shame.

DHS ACTIONS AND REACTIONS

The current political leadership of the Department of Homeland Security (DHS) and USCIS has aggressively—and wrongfully—reacted to these actions. They have also taken prohibited retaliatory measures.

¹¹ *Washington Post*, Charles Tjersland, *I Became an Asylum Officer to Help People. Now I put Them Back in Harm’s Way* (July 12, 2019), available at https://www.washingtonpost.com/outlook/i-became-an-asylum-officer-to-help-people-now-i-put-them-back-in-harms-way/2019/07/19/1c9f98f0-a962-11e9-9214-246e594de5d5_story.html.

¹² *NPR Morning Edition*, *Asylum Officers Are Being Used As An Immigration Deterrent, Tjersland Says* (Aug. 19, 2019), available at <https://www.npr.org/2019/08/16/751672742/asylum-officers-are-being-used-as-an-immigration-deterrent-tjersland-says>.

Partisan Broadcasts to Employees.—Ken Cuccinelli was publicly named acting USCIS director on June 10, 2019.¹³ He has since been named acting deputy secretary of DHS. On June 10, he sent the following email to USCIS staff:

“We must work hand-in-hand with our colleagues within DHS along with our other Federal partners to address challenges to our legal immigration system and enforce existing immigration law. Together we will continue to work to stem the crisis at our Southwest Border . . . We will also work to find long-term solutions to close asylum loopholes that encourage many to make the dangerous journey into the United States so that those who truly need humanitarian protections and meet the criteria under the law receive them . . . ”

Mr. Cuccinelli’s first-day-of-work statement was not well-received by the workforce. According to the media report quoting the email, “one DHS official said the announcement was dropped on employees suddenly and could be distracting during an already tumultuous time. ‘My concern is with employees and their morale,’ the official said . . . Former USCIS officials said the email sent by Cuccinelli . . . was concerning . . . ‘Everything in that email suggests he is more interested in enforcement than in services, which is the agency’s mission,’ said Ur Jaddou, former chief counsel at the agency.”¹⁴

Mr. Cuccinelli then went further. Eight days after his start, he sent on June 18, 2019 a highly partisan broadcast email to Asylum Division employees. According to a contemporaneous media report:

“Cuccinelli began the message by relaying the number of apprehensions at the southwest border and that the system had reached a breaking point. He told staffers that USCIS needed to do its ‘part to help stem the crisis and better secure the homeland.’

“‘Asylum officers, you took an oath to support and defend the constitution of the United States. As a public servant your role as an asylum officer requires faithful application of the law.’

“The acting director cited statistics used by the Trump administration about the individuals who do not show up for their immigration court hearings and those who do not end up being granted asylum.

“Cuccinelli then told staffers, in an apparent warning, that the gulf between the number of individuals granted passage under the screening and those who are granted asylum by an immigration judge was wider than the ‘two legal standards would suggest.’

“‘Therefore, USCIS must, in full compliance with the law, make sure we are properly screening individuals who claim fear but nevertheless do not have a significant possibility of receiving a grant of asylum or another form of protection available under our nation’s laws,’ he said.

“Cuccinelli added that officers have tools to combat ‘frivolous claims’ and to ‘ensure that [they] are upholding our nation’s laws by only making positive credible fear determinations in cases that have a significant possibility of success.’

“One official at the Department of Homeland Security—of which USCIS is a part—said the email was ‘insane,’ while former officials said the email was clearly a threat.”¹⁵

Needless to say, we regarded such messages as an affront to the professionalism and loyalty of the Asylum Officer Corps. We have always been fervently committed to upholding our oath to defend the Constitution and faithfully apply the laws of the United States of America; and we have served with great distinction so doing for almost 3 decades. I can confirm that Mr. Cuccinelli’s harsh admonishment of USCIS Asylum Officers has had an intimidating effect upon employee morale and performance.

Attacking the Union.—Mr. Cuccinelli continued on this course in ensuing days. On June 26, 2019, we filed our Amicus brief supporting the legal challenge to MPP.¹⁶

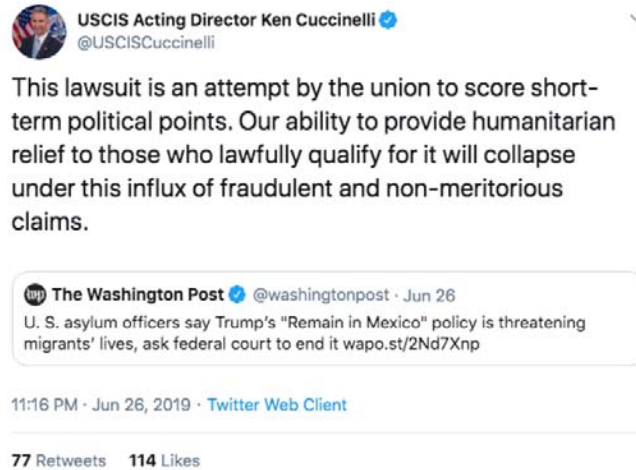
¹³ USCIS Press Release, *Cuccinelli Named Acting Director of USCIS* (June 10, 2019), available at <https://www.uscis.gov/news/news-releases/cuccinelli-named-acting-director-uscis>.

¹⁴ BuzzFeed News, Hamed Aleaziz, *Trump’s New Immigration Services Chief Took a Hard Line on Immigrants’ Children* (June 10, 2019), available at <https://www.buzzfeednews.com/article/hamedaleaziz/trump-has-appointed-an-immigration-hardliner-to-run-an>.

¹⁵ BuzzFeed News, Hamed Aleaziz, *A Top Immigration Official Appears to Be Warning Asylum Officers About Border Screenings* (June 18, 2019), available at <https://www.buzzfeednews.com/article/hamedaleaziz/uscis-director-asylum-officers-email>.

¹⁶ *Innovation Law Lab v. McAleenan*, No. 19–15716 (9th Cir.) (Amicus brief filed June 26, 2019).

Late that evening, Mr. Cuccinelli, a prolific Twitter user, tweeted “[t]his lawsuit is an attempt by the union to score short-term political points.”



Minutes later, he tweeted “[t]his demonstrates the complaining union leaders are choosing to deny reality.”



The next day, USCIS issued a press release quoting Mr. Cuccinelli accusing me and my leadership of “playing games” and engaging in a “cheap political stunt.”¹⁷ That night, Mr. Cuccinelli was interviewed on CNN by Erin Burnett.¹⁸ When asked whether we were right when we said in our Amicus brief (at page 24) that Asylum Officers “should not be forced to honor departmental directives that are fundamentally contrary to the moral fabric of our Nation and our international and domestic legal obligations,” he said:

¹⁷ Press Release, *USCIS Acting Director Cuccinelli Response to Amicus Brief Filed by AFGE Local 1924 Leadership* (June 27, 2019), available at <https://www.uscis.gov/news/news-releases/uscis-acting-director-cuccinelli-response-amicus-brief-filed-afge-local-1924-leadership>.

Mr. Cuccinelli is quoted in more detail as follows: “Union leadership continues to play games while the border crisis intensifies. Lives are being lost, detention facilities are unsustainably overcrowded, and illegal aliens with frivolous claims continue to overwhelm our system. The fact of the matter remains that our officers signed up to protect the truly vulnerable, our asylum system, and most importantly, our country. A cheap political stunt helps no one and certainly does not help to contain this crisis.”

¹⁸ CNN, *Erin Burnett Out Front* (June 27, 2019), available at <https://podcasts.apple.com/us/podcast/biden-sanders-about-to-take-center-stage-as-democrats/id475738195?i=1000443007137>.

“Absolutely not. If you look at the rest of their filing, you’ll also see that they say there isn’t a problem basically on the border. We can handle this. We don’t need to institute special considerations, things like MPP that’s being worked on with Mexico and expanded. They’re in denial of reality.”
 “And thankfully most of our asylum officers don’t think that. The union has gone ahead and filed this Amicus brief, but it clearly doesn’t represent the state of play at the border or that we are dealing with in our agency as it relates to asylum.”

Mr. Cuccinelli’s words were chilling and intimidating then; they are chilling and intimidating now. That should be obvious when coming from the head of the agency—who very publicly castigates a Union for exercising its lawful rights on behalf of its members.

*Union Reaction: Grievance Filed*¹⁹.—AFGE Council 119 reacted to the foregoing by filing a National-level grievance against Mr. Cuccinelli. The grievance alleged Mr. Cuccinelli violated multiple provisions of the Collective Bargaining Agreement of 2016 between USCIS and Council 119 and the Federal Labor Relations Act (FLRA) by committing one or more egregious unfair labor practices.²⁰ More specifically, it charged Mr. Cuccinelli with making hostile and unfounded statements about our Amicus brief filing by denouncing the Union for a brief he believes does not represent the views of our members, and by challenging the legitimacy of the USCIS employees who have exercised their First Amendment rights and who have exercised their rights to participate in and act for the Union. His actions have had the effect of interfering with the Union’s effective representation of the bargaining unit—and hindered the employees from exercising their first amendment rights through their Union’s advocacy on their behalf.

As required under the Collective Bargaining Agreement, Council 119 submitted the grievance to USCIS on August 1, 2019; it was rejected on August 29, 2019. USCIS justified its decision on the grounds that Mr. Cuccinelli was merely expressing his personal opinion and “[t]here is simply nothing hostile about [his] statements.” To continue defend our freedom of expression and the rights of USCIS employees we invoked our right to third-party arbitration on September 29, 2019. Council 119 and Agency representatives are seeking the assistance of the Federal Mediation and Conciliation Service to select an arbitrator and schedule a hearing in the matter.

Mr. Cuccinelli Refuses to Meet with the Union.—Mr. Cuccinelli has repeatedly rebuffed the Union’s requests to meet and address the concerns of our members. At his first and only town hall meeting with USCIS employees on October 23, 2019, I asked Mr. Cuccinelli if he would meet with the Union. According to a media report, he said: “I believe the day you tried to get on my calendar was the day you went on CNN and had some things to say, and I didn’t want to legitimize some of what you were saying there . . . Maybe another day, but it’s hard to meet with people who are suing you.”²¹ His refusal is particularly disturbing in view of the contentious negotiations that occurred between the Union and the Agency over our term collective bargaining agreement (it has been sent to our membership for ratification).

Hunting for Whistleblowers.—Mr. Cuccinelli has made finding and punishing “leakers” a top priority. He boasted about it during a November 3, 2019 TV interview.

“[I]n my first 100 days here we disciplined 27 leakers. We have a handful more still in the pipeline for discipline. I have had confrontations unfortunately with employees instigated by them, not by me, on policy matters that our agency is engaged in, and I think those discussions, frankly, are more appropriate to the political arena than to an employee-management relationship.”²²

Of course, this kind of talk is chilling and intimidating for everyone, particularly whistleblowers. The work of Asylum Officers has come under increased scrutiny; many are fearful for their jobs. Regular notices warn employees of disciplinary ac-

¹⁹ Some of the information found in this section is not currently in the public domain. AFGE, the party that sent or received the information discussed here, now consents to its publication.

²⁰ The grievance alleged that Mr. Cuccinelli’s statements were unfair labor practices inasmuch as the FLRA makes it an unfair labor practice for an agency “to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter.” 5 U.S.C. § 7116(a)(1).

²¹ BuzzFeed News, Hamed Aleaziz, *There Was a Tense Exchange Between One of Trump’s Top Immigration Officials and an Asylum Officer* (Oct. 23, 2019), available at <https://www.buzzfeednews.com/article/hamedaleaziz/ken-cuccinelli-uscis-meeting-tense-exchange>.

²² Full Measure, *Immigration Battles* (Nov. 3, 2019), available at <http://fullmeasure.news/news/immigration/immigration-battles>.

tion for those who “leak” internal policy and procedural guidance documents to outside parties. Moreover, the anxiety is now even higher because, other than Mr. Cuccinelli’s boast, USCIS has provided the Union with no formal notification of such a high number of disciplinary actions having been taken against “leakers.” This subcommittee can and should demand answers.

Leadership “Reassignment”.—In late September 2019, Acting Director Cuccinelli took the highly unusual step of reassigning the Asylum Division’s long-time and highly-respected chief to a lower-level management position. As described in Senator Merkley’s report:

“The reassignment of John L. Lafferty, an experienced career manager, delivered a harsh message to USCIS staff . . . Whistleblowers have reported that Mr. Lafferty was told he was being reassigned just days before it was announced. It took the form of a ‘rubber-stamped’ letter from Acting Director Cuccinelli. Mr. Lafferty reluctantly accepted the transfer—albeit by informing management that he considered it ‘involuntary.’

“It is not apparent whether there are specific actions that cost Mr. Lafferty his job, but whistleblowers report that his firing is perceived as the result of acting as a committed, civil servant who played it by the book. In other words, he was too neutral. His reassignment was intended to send a message, and that message was received. Rank-and-file officers drew their own obvious conclusion: That Lafferty was fired for applying asylum law as written rather than skewing it to meet the administration’s political goals.”²³

I want to elaborate and confirm that Mr. Lafferty’s removal dealt a tremendous blow to the morale of the workforce, which took this adverse action as a warning to all concerned. The exact reasons for Mr. Lafferty’s transfer remain unknown to the Union. However, our members believe it was because of his ardent defense of the integrity of the Asylum Program, his insistence on proper application of the law—as well as his passionate devotion to the Asylum Officer Corps which has come under attack by the Trump administration.

Retaliatory Investigation.—Despite the legal right of Union officials to speak freely to Congress, the media and the public about matters that affect the morale, working conditions and welfare of our members, I and my Union colleagues have continuing concerns about possible retaliation instigated by political leadership.

A notable current example is an on-going internal investigation USCIS is conducting of Local 1924 Vice President Chuck Tjersland, discussed above, who has been formally warned for having expressed his opinions—in his official Union capacity—to the *Washington Post* and NPR.²⁴ That is wrong. It again sends a chilling and intimidating message to everyone. Again, this subcommittee can and should demand answers.

WHAT CAN CONGRESS DO?

I close with four recommendations about what you and your colleagues can and should do.

1. More Hearings Like This.—Over the past 3 years we have repeatedly seen how bad publicity causes Trump administration policy to veer and reverse course. The evidence we are providing to today is shocking. Congressional hearings uniquely provide a forum for receiving such evidence.

2. Investigations.—By law, Congress is in a special position when it comes to unearthing and analyzing evidence. As noted above, the Federal Whistleblower Protection Act allows Federal employees to lawfully make disclosures to Congress.²⁵ Congress can and should leverage such authority to gather evidence from whistleblowers and others. The evidence can and should be used as a basis for legislation, hearings and further investigation. Senator Merkley’s report is a good example.

3. Appropriations.—Because Congress controls appropriations, it has and should continue to insert agency mandates into spending bills. For example, the Consolidated Appropriations Act of 2019, enacted in February 2019, specifically prohibited DHS from using information obtained by the Department of Health and Human

²³ Merkley Report, at 41–42 (footnotes omitted). See also CNN, Geneva Sands, *US Asylum Chief Reassigned After Critical Email Publicized* (Sept. 4, 2019), available at <https://www.cnn.com/2019/09/04/politics/uscis-asylum-john-lafferty/index.html>.

²⁴ The information in this section about Chuck is not currently in the public domain. He now consents to its publication.

²⁵ See 5 U.S.C. 2302(c)(2)(C)(iii).

Services to apprehend, detain, or remove sponsors of unaccompanied minors.²⁶ Such mandates should continue to be imposed on DHS.

4. *Improved Whistleblower Protections.*—We know that whistleblowers provide vital information used to combat waste, fraud, and abuse. But law to protect them is missing and imperfect. Much is still left to be done. We need legislation which establishes stronger, more effective consequences for wrongful retaliation and disclosures of confidential identities, and which further enshrines the independence of offices of inspector generals, the Office of Special Counsel, and the Congress.

CONCLUSION

Asylum officers take their oaths to preserve, protect, and defend the Constitution seriously. They are now under daily attack from the White House, political appointees, and extremist media. Their safety, careers, and reputation are all at risk. You are helping with his hearing today. Please keep helping.
Thank you.

Miss RICE. Thank you, Mr. Knowles. I now recognize Mr. Homan to summarize his statement for 5.

STATEMENT OF THOMAS D. HOMAN, FORMER ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Mr. HOMAN. Charwoman Rice, Ranking Member Higgins, and Members of the subcommittee, the Migrant Protection Protocol is an important step in regaining control of the Southern Border.

When the MPP was implemented, the numbers of illegal aliens crossing our border illegally was at unprecedented levels. The MPP requires that certain foreign individuals entering or seeking admission to the United States from Mexico may be returned to Mexico and wait outside the United States for the duration of their immigration proceedings.

Our country is still facing a security and humanitarian crises on the Southern Border, and I applaud DHS for using all appropriate resources and authorities to address the crisis.

Over 70 percent of all illegal entrants in the United States this fiscal year are family units and unaccompanied children, and mostly from Central America. Even though over 85 percent of all Central Americans that arrive at the border claim fear, less than 20 percent get relief from our courts, because they simply don't qualify for asylum, or they don't show up for their case.

The last numbers I saw of the immigration court reports that are on-line showed almost half, 46 percent, of those that claimed fear at the border don't file a case with EOIR. Once they are released in the United States, which is their primary goal, they disappear and wait for the next DACA or amnesty to roll around. Misguided court decisions, outdated laws, and the failure of Congress to close the loopholes that have caused this unprecedented surge has made it easier for illegal aliens to enter and remain in the United States.

The most recent 100,000 family units have been ordered removed after due process. Less than 2 percent have left. In June of this year, just 5 months ago, Acting Secretary McAleenan testified that 90 percent of all family units in a most recent pilot study failed to show up in court after being released from the border.

The MPP will help to ensure that those who claim asylum and want to see a judge and get due process will actually see a judge.

²⁶H.J. Res. 31, Consolidated Appropriations Act 2019 §224 (Feb. 25, 2019), <https://www.congress.gov/116/plaws/publ6/PLAW-116publ6.pdf>.

I hear from many, including some here today, that these migrants have a right to claim asylum, they have the right to see a judge, and they demand due process. I agree. But there is the flip side of that coin. After due process, if ordered removed by a judge, that order needs to be followed and executed, or there is absolutely no integrity in the entire process.

The loopholes that Congress has failed to close, along with the numerous enticements such as abolish ICE, no more immigration detention, and free health care for aliens, sanctuary cities, a pathway to citizenship for those here illegally all encourage more people to make that dangerous journey, which continues to bankroll criminal cartels, the same cartels that are smuggling drugs in this country at alarming rates.

ICE seized enough opioids last year to kill every man, woman, and child in this country twice. Thirty-one percent of women are being sexually assaulted making this journey, and children are dying. Border Patrol agents rescued over 4,000 migrants who may have died, if they weren't found and saved by Border Patrol agents. But you don't hear a lot about that, because people are too busy calling the Border Patrol racists and Nazis.

Now there is a crisis on the border. Even though many said there were no caravans, there were, and we saw them. Others said it was a manufactured crisis, and now we know it wasn't. Their President has been right from Day 1 on this, and has done everything he can, but—within the law in trying to secure our border and protect our sovereignty.

As a matter of fact, on May 7 of this year the 9th Circuit Court of Appeals stayed an injunction against MPP and has allowed it to continue. The significant gains made on this issue are because of our President and the men and women of the CBP and ICE.

Again, MPP is based on the laws written by Congress and upheld by the 9th Circuit.

I am here at another hearing today that will examine a policy implemented by the administration in an attempt to secure our Nation. However, I have seen no hearings in the House regarding the 3 loopholes that are causing the crisis, such as the abuse of the asylum process, the *Flores* settlement agreement, or the TVPRA, Trafficking Victims Act; no hearing on sanctuary cities or the numerous victims of crimes at the hands of those released back into the street, rather than being turned over to ICE; no hearings on the willful or disgusting attacks against the men and women who served within the Border Patrol and ICE; no hearing about securing our border.

The Border Patrol has said that 40 to 50 percent of their manpower is no longer on the front line defending our border because they are dealing with these families and UACs. When half of our Border Patrol is not on the line, the Border Patrol is more vulnerable to drug smuggling and the smuggling of bad operators such as cartel members, gang members, and those who want to come to this country to do us harm.

If you are someone in this world that wants to come to the United States and do us harm, our border is vulnerable. It is hard to buy a plane ticket to the United States or get a visa here, because after 9/11 we have all sorts of security checks and derog

searches are conducted. If you want to get here and do us harm, you are going to come here the same way 12 to 20 million others did, illegally through our Southern Border, especially now, because half the border is unguarded.

The President recognized this and has taken unprecedented actions to address this crisis. I applaud him for doing it. Now it is time for this body to legislate and address this crisis and protect our Nation. I look forward to answering your questions today. Thank you.

[The prepared statement of Mr. Homan follows:]

PREPARED STATEMENT OF THOMAS D. HOMAN

Chairwoman Rice, Ranking Member Higgins and Members of the subcommittee: The Migrant Protection Protocols (MPP) is an important step in regaining control of our Southern Border. When the MPP was implemented, the numbers of illegal aliens crossing our border illegally was at unprecedented levels. The MPP requires that certain foreign individuals entering or seeking admission to the United States from Mexico—illegally or without proper documentation—may be returned to Mexico and wait outside of the United States for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay.

Our country is facing a security and humanitarian crisis on the Southern Border. I applaud DHS for using all appropriate resources and authorities to address the crisis and execute our mission to secure the borders, enforce immigration and customs laws, facilitate legal trade and travel, counter traffickers, smugglers and transnational criminal organizations, and interdict drugs and illegal contraband. That is their job and that is their mission as dictated by Congress in the enactment of laws that CBP and ICE enforce.

Reading straight from the DHS website that is available for all to see, I will quote. The MPP will help restore a safe and orderly immigration process, decrease the number of those taking advantage of the immigration system, and the ability of smugglers and traffickers to prey on vulnerable populations, and reduce threats to life, National security, and public safety, while ensuring that vulnerable populations receive the protections they need. As a 34-year veteran of immigration enforcement who has served in the Border Patrol, the INS, ICE from the front line and on the street all the way to the first acting director of ICE who came through the ranks. I agree with the DHS assessment because I have seen the border crisis and the exploitation of our laws first-hand.

Historically, the majority of illegal aliens that came here were single adult males from Mexico who could be quickly processed and removed to Mexico in less than an hour. As a Border Patrol Agent, you could process an alien from Mexico within 20 minutes and after accepting a voluntary return would be returned to Mexico through a Port of Entry within minutes. However, those dynamics have changed where we now have over 70 percent of all illegal entrants into the United States this fiscal year being family units and unaccompanied children and mostly from Central America. Even though over 85 percent of all Central Americans that arrive at our border claim fear, less than 10–15 percent get relief from our courts because they simply don't qualify for asylum or they don't show up for their case. The last numbers I saw for the Immigration Court reports showed almost half of those that claim fear at the border don't file a case with EOIR. Once they are released into the United States, which is their primary goal, they disappear and wait for the next DACA or Amnesty to roll around.

Misguided court decisions and outdated laws and the failure of Congress to close the loopholes that have caused this unprecedented surge has made it easier for illegal aliens to enter and remain in the United States if they are adults who arrive with children, unaccompanied alien children, or individuals who fraudulently claim asylum. There are only about 3,000 designated family beds to deal with the almost 14,000 family unit arrests during the peak months which mean most will be released and never spend a day in custody. Out of the most recent 100,00 family units that have been ordered removed after due process, less than 2 percent have left. In June of this year, just 5 months ago, the Acting Secretary of DHS testified that 90 percent of all family units in the most recent pilot study failed to show up in court after being released from the border. The MPP will help to ensure that those who claim asylum and want to see a judge and get due process will actually see a judge. I hear from many, including some here today, that these migrants have the right

to claim asylum and they have the right to see a judge and they demand due process. I agree. But there is a flip side to that coin. After due process, if ordered removed by a judge, that order needs to be followed up and executed or there would be no integrity in the entire process. Ninety-five percent of everyone ICE removes from this country after due processes are removed from a bed. Those that are not detained and released are seldom returned to their country because they are in flight and hiding.

While we may not be at record highs right now because of the actions of this President and not this legislative body, the numbers are still at a crisis level and overwhelming the U.S. immigration system, leading to a "system" that enables smugglers and traffickers to flourish and often leaves aliens in limbo for years. This has been a prime cause of our over 800,000 case backlog in immigration courts and delivers no consequences to aliens who have entered illegally.

The loopholes that Congress has failed to close along with the numerous enticements such as abolish ICE, no more immigration detention, free health care for aliens, sanctuary cities, a pathway to citizenship for those here illegally, all encourage more people to make that dangerous journey which will bankroll criminal cartels. The same cartels that are smuggling drugs into this country at alarming rates. ICE seized enough opioids last year to kill every man, woman, and child in this country twice. Thirty-one percent of women are being sexually assaulted making that journey and children are dying. Border Patrol rescued over 4,000 migrants who may have died if they were not found and saved by our Border Patrol Agents. You don't hear a lot about that because some people are too busy calling them racists and Nazis.

The MPP will provide a safer and more orderly process that will discourage individuals from attempting illegal entry and making false claims to stay in the United States, and allow more resources to be dedicated to individuals who legitimately qualify for asylum.

I am not an attorney as those seated next to me are. But I have enforced immigration laws for over 34 years. According to the Government attorneys and again available on the DHS website it reads that Section 235 of the Immigration and Nationality Act (INA) addresses the inspection of aliens seeking to be admitted into the United States and provides specific procedures regarding the treatment of those not clearly entitled to admission, including those who apply for asylum. Section 235(b)(2)(C) provides that "in the case of an alien . . . who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the U.S.," the Secretary of Homeland Security "may return the alien to that territory pending a [removal] proceeding under § 240 of the INA." Mexico is our partner in MPP along with the United Nation's IOM.

With certain exceptions, MPP applies to aliens arriving in the United States on land from Mexico (including those apprehended along the border) who are not clearly admissible and who are placed in removal proceedings under INA § 240. This includes aliens who claim a fear of return to Mexico at any point during apprehension, processing, or such proceedings, but who have been assessed not to be more likely than not to face persecution or torture in Mexico. Unaccompanied alien children and aliens in expedited removal proceedings will not be subject to MPP. Other individuals from vulnerable populations may be excluded on a case-by-case basis.

DHS has set up the system in a way that I think makes sense. This again is explained clearly on their website. Certain aliens attempting to enter the United States illegally or without documentation, including those who claim asylum will no longer be released into the country, where they often fail to file an asylum application and/or disappear before an immigration judge can determine the merits of any claim. Instead, these aliens will be given a "Notice to Appear" for their immigration court hearing and will be returned to Mexico until their hearing date.

While aliens await their hearings in Mexico, the Mexican government has made its own determination to provide such individuals the ability to stay in Mexico, under applicable protection based on the type of status given to them.

Aliens who need to return to the United States to attend their immigration court hearings will be allowed to enter and attend those hearings. Aliens whose claims are found meritorious by an immigration judge will be allowed to remain in the United States. Those determined to be without valid claims will be removed from the United States to their country of nationality or citizenship.

DHS is working closely with the U.S. Department of Justice's Executive Office for Immigration Review to streamline the process and conclude removal proceedings as expeditiously as possible. Consistent with the law, aliens in removal proceedings can use counsel of their choosing at no expense to the U.S. Government. Aliens subject to MPP will be afforded the same right and provided with a list of legal services providers in the area, which offer services at little or no expense to the migrant.

Again, this program makes sense. MPP will reduce the number of aliens taking advantage of U.S. law and discourage false asylum claims. Aliens will not be permitted to disappear into the United States before a court issues a final decision on whether they will be admitted and provided protection under U.S. law. Instead, they will await a determination in Mexico and receive appropriate humanitarian protections there. This will allow DHS to more effectively assist legitimate asylum seekers and individuals fleeing persecution, as migrants with non-meritorious or even fraudulent claims will no longer have an incentive for making the journey. Moreover, MPP will reduce the extraordinary strain on our border security and immigration system, freeing up personnel and resources to better protect our sovereignty and the rule of law by restoring integrity to the American immigration system.

Now, there is a crisis on our border. Even though many said that there were no caravans, there were and we saw them. Others said that it was a manufactured crisis and now we know it wasn't. The President has been right from Day 1 on this and has done everything he can, thinking out of the box but within the law and trying to secure our border and protect our sovereignty. As a matter of fact, on May 7 of this year the 9th Circuit stayed an injunction against the MPP and has allowed it to continue. Illegal crossings are down considerably from the high in May but we are still at high numbers beyond last year. The significant gains made on this issue are because of our President and the men and women of CBP and ICE not because of anyone in this room.

I am here at another hearing that will again push a false narrative about this administration and the men and women that work for it. Another hearing that will examine a policy implemented by the administration in an attempt to secure our Nation. However, I have seen no hearings in the House regarding the 3 loopholes that are causing this crisis such as the abuse of the asylum process, the *Flores* agreement, or the TVPRA. No hearing on sanctuary cities and the numerous victims of crimes at the hands of those released back into the street rather than being turned over to ICE. No hearing on the obvious wide-spread fraud surrounding the asylum process. No hearings on the willful and disgusting attacks against the men and women who serve within the Border Patrol and ICE. No hearing about how we secure our border. Why is this important? Because this is not just a humanitarian issue in our border. The Border Patrol has said that 40–50 percent of their manpower is no longer on the front line, defending our border because they are dealing with these families and UACs. When half of our Border Patrol is not on the line, the border is more vulnerable to drug smuggling and the smuggling of bad operators such as cartel members, gang members, and those who want to come to this country to do us harm. If you are someone in this world that wants to come to this country to blow up a building, our border is vulnerable. It's hard to buy a plane ticket to the United States or get a visa to the United States after 9–11 because of all the security checks and derog searches conducted. If you want to get here quickly and easily you will come the same way 12–20 million others did, illegally through our Southern Border, especially now because half of the border is unguarded. The President recognized this and has taken unprecedented actions to address this crisis. I applaud him for doing it. Now it is time for this body to legislate and address this crisis and protect our Nation.

Miss RICE. Thank you. I thank all the witnesses for their testimony. I will remind each Member that he or she will have 5 minutes to question the panel. I will now recognize myself for questions.

Mr. Knowles, I would like to start with you. So there have been news reports, or at least one issued late last week, that seemed to indicate that asylum officers were pressured by Border Patrol agents to deny certain migrants' entry into the United States. To your knowledge, has this happened?

What have your members shared with you about the directives they are asked to carry out under the Remain-in-Mexico Policy?

Mr. KNOWLES. Am I on speaker?

Miss RICE. Yes.

Mr. KNOWLES. All right. I have no direct knowledge of the—what you just mentioned in the news report, although I have read the news report of Border Patrol agents directing asylum officers to make certain decisions.

I did not get the last part of your question.

Miss RICE. What have your members shared with you about the directives they are asked to carry out under the Remain-in-Mexico Policy?

Mr. KNOWLES. Well, they have shared—I—first of all, I don't know a single asylum officer in the country—and I speak to them all over the country—who believes that this is a good policy. Most of them have been very vocal in talking to me about how it is illegal, and it places them feeling that they are complicit in a human rights abuse.

They are sworn to carry out our laws, which guarantee due process for asylum seekers. Not every asylum seeker is guaranteed asylum, but they are guaranteed due process and humane treatment. Under MPP the asylum officer is not even allowed to ask them about their asylum claim, they can only ask them about their fear of remaining in Mexico. That process is carried out at a very high standard, which is almost impossible for the applicant to meet.

Moreover, we have had asylum officers who, in applying very rigorously the flawed MPP rules, tried to make positive decisions, and they were overruled by their supervisors and headquarters monitors saying no, that doesn't meet the standard, with no real legal explanation, other than the front office has eyes on this.

Miss RICE. So you mentioned also that people who felt threatened with retaliation—and also how whistleblowers were being treated. I have very limited time, so I would like to follow up with you on those specific issues.

But you also said that MPP was one of many programs that should be either revised or done away with. You also mentioned the asylum hearings being held in Guatemala, and not even being supervised by officers, American officers.

What other programs were you talking about when you—that you would include in that category?

Mr. KNOWLES. So we have written 4 amicus briefs that I would urge your committee to look at; the first was opposing the travel ban and the suspension of the refugee program in 2017; the second was on MPP; the third was on very questionable changes that came, we believe, from the White House to our training and policy guidance manuals that officers must use, which had the effect of substantially changing and altering the way that we do credible fear screening in ways that we believe were unlawful; the fourth brief we filed a month ago, opposing the so-called interim final rule, which imposes a bar on asylum seekers, an absolute bar to asylum seekers who pass through other countries and did not seek asylum there.

Over the weekend there was published in the Federal record a new rule that will, as I understand, be implemented this week, and our officers are to be trained today. In fact, I am supposed to attend the training myself on how cases will be adjudicated, who will these—asylum seekers will be transported to Guatemala to have their asylum cases heard in Guatemala—

Miss RICE. Correct.

Mr. KNOWLES [continuing]. By the Guatemalans—

Miss RICE. Right.

Mr. KNOWLES [continuing]. Not by the United States.

Miss RICE. Thank you for pointing that out. Dr. Schneberk, with the remaining time I have, I mean, the trauma that is done to these people—and it sounds like a large portion of them are women and children and other vulnerable populations—what are the long-term consequences on their mental, emotional, and physical health? What is the likelihood that they are going to be able to recover from that?

Dr. SCHNEBERK. Briefly, you know, there is a whole area of medicine called trauma-informed care. Trying to figure out how we do a better job taking care of these folks is an on-going study.

I mean, but to start with, you know, trying to create safety is kind-of rule No. 1. Long-term outcomes, you know, there is a lot—you could imagine the amount of mental health effects as a result of these types of experiences.

But, I mean, there is not only just mental health issues, you know, there is actually higher morbidity and mortality, as in people die at younger ages because of adverse childhood events. There is a famous study called the ACES Study that basically documented a lot of these adverse childhood events, one of them being, you know, incarceration of a parent. There is a lot of extrapolatable—all types of experiences that you look at what is going on with kids and younger people that are subjected to these policies, and it is pretty easy to say there is going to be a lot of health—denigrating health effects.

Miss RICE. I want to thank you all for being here today, and I now recognize the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, for questions.

Mr. HIGGINS. Thank you, Madam Chairwoman. Mr. Homan, under the Migrant Protection Protocols, an international agreement between the United States and Mexico—just clarify for America, please. America is watching. The Mexican government provides migrants with humanitarian protections for the duration of their stay. Both the government of Mexico and faith-based shelters are housing migrants who have been returned as part of MPP.

Just to put a number on this to clarify for America, as of November, the count is 57,430 illegal immigrants have been returned to Mexico to be housed by Mexican government and faith-based shelters under this program. I am sure we all recall very recent history: We were facing 150,000 crossings a month. So, just to put this in perspective, a certain percentage of illegal crossings are intercepted, processed, and returned to Mexico, while their asylum due process moves forward. We have done our best to accommodate court systems to give them access for more rapid resolution.

Is that a—generally, a good description of this program, Mr.——

Mr. HOMAN. Yes, sir, you are accurate.

Mr. HIGGINS. OK. Do you have personal knowledge of what is identified as faith-based shelters that are being used?

Mr. HOMAN. No. I know the U.S. Government, along with IOM, a division of the United Nations, is helping to oversee that process.

We are also—there is actually funding from the United States flowing into Mexico to help pay for the expenses of these facilities.

Mr. HIGGINS. Thank you, sir. Ms. Vela, are you familiar with the faith-based shelters?

Ms. THORN VELA. I am familiar——

Mr. HIGGINS. Generally speaking. We are not trying to—

Ms. THORN VELA. Yes, Congressman, there are faith-based shelters.

Mr. HIGGINS. OK. Are these generally—the children of God that occupy those shelters, are they generally of Hispanic origin?

Ms. THORN VELA. Yes.

Mr. HIGGINS. They speak Spanish?

Ms. THORN VELA. Yes.

Mr. HIGGINS. All right. Your opening statement—and thank you for your very thorough opening statement—essentially accuses the United States of purposefully sending MPP illegal immigrants, which—we are just trying to handle the due process. It is quite a situation down there. You are essentially accusing the United States of purposefully sending these immigrants into a horrendous situation where, based upon your testimony, you essentially indicate that those Mexican government officials and faith-based organization workers, primarily volunteer workers that are occupying these shelters and running them, that they don't care about these MPP folks, that they have no—they have no compassion for them.

Is that your position, that these folks down there have no compassion for the MPP?

Ms. THORN VELA. I understand that the government of Mexico has said that they are providing aid, but our—from the ground, what we see every day, we don't see that aid. Certainly, anyone—

Mr. HIGGINS. All right, so just to clarify, you have the right to your opinion. I would defend your right to have your opinion, good lady. I just want to clarify.

You seem to be indicating that the United States has set up some system where we are knowingly sending MPP illegal immigrants into shelters that are run by folks that don't love them and care for them. In fact, they are quite hateful toward them.

Ms. THORN VELA. From what I have seen toward—in Matamoros, Congressman, they are not—the individuals being sent back to MPP are not being sent back to shelters. They are living in the streets in a 2,000-person refugee camp that does not have any shelter for them. The only aid, the only compassion that they are getting, are from volunteers that are—

Mr. HIGGINS. So that would be an indication, just in the interest of time—you are stating that the Mexican Government is not living up to its agreement with—under MPP.

Ms. THORN VELA. I have not seen that promise fulfilled on the ground in Matamoros.

Mr. HIGGINS. All right, one final question. Thank you for your candor, Madam. You have made courageous statements, and this committee cares about these things.

But I ask you, regarding MPP illegal immigrants being knowingly returned to Mexico to be tortured, that is quite an accusation. Do you have any proof of that?

Ms. THORN VELA. We have partners on the ground that worked with the young mother and her child that were tortured and released. The young child—

Mr. HIGGINS. You are referring to 1 case out of almost 58,000?

Ms. THORN VELA. I personally am only aware of that case, but I have partners that work not only in Matamoros, but throughout the border where MPP is rolled out. My partners can tell dozens and dozens and dozens of stories of very similar conduct.

Mr. HIGGINS. Thank you all for your testimony.

Madam Chairwoman, my time has expired.

Miss RICE. Thank you, Mr. Higgins. The Chair recognizes for 5 minutes the gentleman from Mississippi, Mr. Thompson.

Mr. THOMPSON. Thank you very much. Those of us who have been in the area where the Remain in Mexico policy is being implemented have real questions about the health and safety and sanitary conditions of people who are there. I don't think those standards are the standards that we hold dear as Americans in this country.

I think our concern, more than anything else, is when you implement a policy that lowers your standard as a country, then that is changing the values of who we are as a country.

So when you put the burden on changing the policy in terms of returning people to Mexico in a dangerous situation, that is not who we are as a country. I think the more important part for us is why change a policy that put people at risk? That is one of the reasons we are here today.

We have heard from 2 attorneys, a doctor, and a practitioner that some of those policies we put in place have, in fact, changed the lives of the people who are coming to this country, seeking asylum.

As a—somebody whose ancestors came to this country as slaves who were absolutely mistreated, I think I have a sensitivity—and some others here—that we don't want our country to ever be a part to anything that mistreat people.

So the goal of why we are here today is to make sure that, as the American Government does its immigration policies, that we still see people as human beings.

We are a Nation of laws. We have values that we have to uphold. So that is why we are here. That is why I complimented the Chairwoman for having the courage to hold a hearing like this. It is a tough situation. I am a grandfather. The last thing I would want is for somebody to mistreat my grandchildren just because they don't look like them. I don't want that.

I voted for the Affordable Care Act because I think, in America, everybody ought to have an opportunity, if they are sick, to go to the doctor. Those are the American values that we hold as Americans. I think we have to be mindful of that.

So with that preface, Ms. Peña, do you think our standards of jurisprudence are being upheld with this Remain-in-Mexico Policy?

Ms. PEÑA. Thank you for the question, Representative Thompson.

In front of me I have the Immigration and Nationality Act. This is the law passed by Congress. I appreciate the question, because I want to bring us back to the legal obligations and jurisprudence which is being circumvented and violated through the MPP protocols.

My job is pro bono counsel at the American Bar Association, and I often train non-immigration attorneys in immigration law. In

fact, sometimes I have tax attorneys tell me this is very complicated law.

The way I describe this law, particularly these specific statutory provisions which are being utilized to implement the Remain-in-Mexico policy, is as such. Please bear with me, Representative. Imagine section 235, which is the expedited removal statute, is a mountain, all right? Two-hundred proceedings, which are full 240 proceedings, is another mountain directly across from it. There is a valley in between. To get out of summary removal proceedings and into full immigration proceedings, 240 proceedings, there is a narrow bridge.

What Remain-in-Mexico has done is taken a small pebble of law in section 235 and created a wrecking ball with it. It has demolished this narrow bridge that included legal protections. The credible fear process has been—interview process has been completely annihilated, and Mr. Knowles has testified to some of the challenges that the asylum officers are frequently raising.

Now, 240 proceedings—I heard earlier, you know, the proceedings are expedited. Instead of several years, it is months. Well, what good is a proceeding, if it is rendered virtually meaningless? There is no lawyer; 2 percent of MPP respondents have lawyers. One attorney utilized University of Texas data and analyzed that, if MPP did not exist, the number of respondents in MPP that would have attorneys would be over 15,000 people. So there is no meaningful right to an attorney.

There is also no meaningful proceeding. At least in the tent court you can see the judge on a video. But you can't understand the judge. You can't effectively communicate with the judge, because the interpreter is not simultaneously translating the hearing. There are no legal service providers. In San Diego I observed an MPP hearing in the brick-and-mortar courts in San Diego, and the judge asked the pro se respondent's father speaking on his—behalf of his family, "Did you receive the notice from the Department of Homeland Security, which includes a list of pro bono legal survivors?" Providers, excuse me.

The father said, "Yes, I received that. However, I called all the numbers, and none of them will provide us services. None of us [sic] will represent us, because we are in Mexico."

So there is, effectively, nobody who can help these individuals to translate their applications into English, to make sure that they can file it with the court.

Of course, all the meanwhile, the—trying to go through this proceeding, they are subjected to horrendous conditions, dangerous conditions.

So, Representative, thank you for the question. I believe we are circumventing our international obligations, which are which are codified in U.S. law. Thank you.

Mr. THOMPSON. Thank you. I yield back, Madam Chair.

Miss RICE. Thank you, Mr. Chairman. The Chair now recognizes for 5 minutes the gentleman from Alabama, Mr. Rogers.

Mr. ROGERS. Thank you, Madam Chairman. Ms. Vela, is it your position that the entire country of Mexico is dangerous?

Ms. THORN VELA. For asylum seekers, yes.

Mr. ROGERS. The entire country?

Ms. THORN VELA. I would say that asylum seekers are at a very heightened risk for danger in Mexico.

Mr. ROGERS. Why is that?

Ms. THORN VELA. Because throughout the journey in Mexico, migrants are facing these same conditions that the United States is returning them to in MPP.

Mr. ROGERS. So if a migrant were to escape Honduras—I think you gave an example of a gang member who—or gang members who raped a young lady if her husband didn't join a gang. Was that you that gave us—

Ms. THORN VELA. No, that was not me, Congressman.

Mr. ROGERS. Well, that example was given. So let's say that a migrant was escaping Honduras for that reason, and they went to Mexico City. Your view is they would be in danger in Mexico City?

Ms. THORN VELA. I would say migrants there are at a heightened risk for being targeted, yes.

Mr. ROGERS. In Mexico City?

Ms. THORN VELA. I would say yes.

Mr. ROGERS. OK. Well, here is my concern. I understand that you have described the encampments on the northern border as being overcrowded, and maybe not as healthy as you would like them to be. But I find it impossible to believe that the entire country of Mexico is dangerous for migrants. The country of Mexico has offered asylum to all these asylum seekers who are escaping Guatemala, Honduras, Venezuela, whatever.

You know, as well as I do, the overwhelming majority of the asylum seekers that reach the United States are not approved. Eighty-seven percent are not approved. They are economic. They are seeking economic advantage. I don't blame them, but they are not in danger. Certainly, once they get out of Honduras and are in Mexico, they are no longer in danger. So we need to be recognizing that people are coming up here for economic opportunities, and they have been overwhelming our system.

Mr. Knowles, you talked about the interview process. When was the last time you personally conducted an interview of an asylum seeker under the MPP program?

Mr. KNOWLES. It should be known that I am almost a full-time union representative, so I am excused from my regular duties. I have not personally conducted MPP interviews, although I am in daily contact with those who do.

Mr. ROGERS. But you haven't—

Mr. KNOWLES. It has been about 4 years since I have adjudicated, personally, asylum cases. But I have adjudicated many in the almost 30 years that I have served.

Mr. ROGERS. In this crisis, though, you have not carried out any interviews in recent years to know the abuses that you described in your statement.

Mr. KNOWLES. I am sorry, could you repeat that?

Mr. ROGERS. You described abuses in the process during your statement a while ago.

Mr. KNOWLES. Yes.

Mr. ROGERS. Those are just being related to you through other individuals. You haven't personally conducted those interviews, to speak of—

Mr. KNOWLES. No, I have not, personally.

Mr. ROGERS. That is my point.

Mr. Homan, now you have described in your statement that MPP will help deter those who are seeking to exploit loopholes in our immigration system. Can you describe for us some of the loopholes that you think are driving this train?

Mr. HOMAN. Well, there is 3 loopholes that—when I was still the ICE director, I worked with Secretary Nielsen, trying to work with the Congress.

The 3 loopholes are—the *Flores* settlement agreement. In fiscal year 2014 and 2015 under the Obama administration, we detained families. It took about 40 days to see a judge. Ninety percent lost their cases. We put them on an airplane and sent them home. Guess what? The numbers across the board have drastically decreased. But then the 9th circuit said you can only hold them for 20 days, and they got released. We are asking Congress to look at that, and let us detain families for, like, 40, 45 days, so they can see a judge. In a family residential center, not a jail.

The second issue is the asylum process, itself, where, you know, practically 90 percent will pass the first fear interview, because the thresholds are put—and I understand why under statute—then, as you said, when they get in front of the court, 87 percent lose. So there is too big of a delta. So that first interview, that threshold needs to be raised, so it makes more sense with the judiciary threshold.

The last thing would be the TVPRA Trafficking Victims Protection Act, because if you are a child from Mexico, and you enter the country illegally, and it is ascertained you are not a victim of trafficking, you can be returned to Mexico immediately. But if you are from Central America, you can't be returned immediately, you got a whole new immigration process that takes years. So we are asking that children from Central America be treated the same as children from Mexico. TVPRA had a great intention of identifying trafficking and preventing it, but this is being exploited now by the cartels and the criminal groups.

Mr. ROGERS. Finally, Ms. Vela, do you know how many immigrants who were allowed into this country awaiting their hearings were removed this year alone in absentia?

Ms. THORN VELA. I am not familiar with that statistic.

Mr. ROGERS. Eighty-nine thousand just this year. The overwhelming majority of people do not show up for these hearings once they get in this country. That is not a situation that we can continue to allow.

Madam Chairman, my time has expired. Thank you very much for your patience.

Miss RICE. Thank you, Mr. Ranking Member. The Chair now recognizes the gentlewoman from New Mexico, Ms. Torres Small.

Ms. TORRES SMALL. Thank you, Madam Chair. Ms. Vela, you testified about the real harm that clients have experienced while waiting to pursue their legal claims for asylum. I have spoken with a local pastor in the district that I represent that has a sister church in Juárez. Their church, they provide shelter. They have been targeted in robberies, and they don't have the resources to protect these individuals from being targeted by the cartels.

My question for you is whether you believe that Remain-in-Mexico, or MPP, can create a disincentive for migrants to legally present themselves at ports of entry to pursue their legal claims for asylum and, instead, attempt to cross undetected to the United States.

Ms. THORN VELA. Thank you, Congresswoman. Yes, I do believe that it creates an incentive for people to not get a—present themselves at the bridge to request asylum.

I know many individuals at Matamoros who, even before MPP was rolled out into Matamoros, were—presented themselves at the bridge, and they were placed on the metering line that was there prior to the MPP rollout. Those people waited in line, followed the law, wanted to present their case there at the bridge. Then, once MPP was rolled out into Matamoros, they ended up being placed in MPP.

So many individuals see this now, that—you know, they want to follow the law, they want to do this the right way, and they end up getting placed right back in Matamoros.

Ms. TORRES SMALL. Thank you. I have also heard from CBP individuals that have seen—had to process the numerous crossings back and forth for their proceedings in the United States. That has also added a strain, just on our ports of entry.

Ms. Vela, have you—do you believe that MPP has been cost-effective, or yielded a more efficient processing of asylum seekers?

Ms. THORN VELA. I don't believe that it is more efficient. The ports of entry are very busy places. Many people cross every day, U.S. citizens, Mexican residents. So it has really congested the ports of entries in the morning when they are lining asylum seekers up. People are having to go very, very early in the morning, 4 a.m. for an 8 a.m. hearing. So it has really caused a lot of delay there at the ports of entry.

Ms. TORRES SMALL. Thank you, Ms. Vela.

Mr. Knowles, I appreciate your testimony, and would like to hear, based on your experience representing asylum officers. How has the broader mission and morale of asylum officers been impacted by Remain-in-Mexico, or MPP?

Mr. KNOWLES. Well, I would like to say, historically, our morale has been extremely high, because people are drawn to the protection work, which is also protection of our country. We have done a very good job, and we have received very high marks from every administration except this one.

The morale under this administration has plummeted, not because of people's political views, but because of the way that we have been treated, and the way that we have been required to carry out very questionable programs. We have not been consulted, either the union or the work force, on the advisability of various methodologies or procedures. We are just told to carry it out, and if we don't like it, you can go work somewhere else.

Ms. TORRES SMALL. Thank you—

Mr. KNOWLES. So that has a big hit on morale.

Ms. TORRES SMALL. Thank you. Mr. Knowles, I have also heard from local Catholic Charities attorneys that these fear hearings and the new rules and consequent training that is necessary for that can actually have a negative impact on the docket. What effect

have you seen, or the asylum officers you represent seen, that the Remain-in-Mexico, or MPP, policy has had on their—other EOR—EOIR dockets?

Mr. KNOWLES. I am not sure I understand the question.

Ms. TORRES SMALL. So my question is whether you think the increased number of fear hearings and back and forth, as well as the constant changes in rules has impacted other cases, other than asylum cases in the EOIR dockets.

Mr. KNOWLES. I wouldn't be able to answer about the EOIR docket because I am just representing people who do the asylum interviews here at USCIS.

Ms. TORRES SMALL. OK, thank you. I want to turn to Ms. Peña in my last quick moment.

You mentioned that only 13 percent of individuals who receive the fear screenings have received positive determinations. Do you feel like, if there was meaningful access to legal representation, this number would be different?

Ms. PEÑA. Yes—excuse me. Thank you for the question, Congresswoman. Yes. We are seeing at least 1 Federal judge has enjoined DHS from disallowing attorneys access to those non-refoulement interviews. So just in the past week or so, attorneys have started having access. So we will see how the numbers change with access to attorneys.

I will say, as a practical matter, it is very, very difficult, because CBP often doesn't allow attorneys access, period, to these areas.

Ms. TORRES SMALL. Thank you, Ms. Peña. My time has expired.

Miss RICE. The Chair recognizes for 5 minutes the gentlewoman from Arizona, Mrs. Lesko.

Mrs. LESKO. Thank you, Madam Chair. My first question is for Mr. Homan.

You know, we have talked about these loopholes in previous hearings, as well. You have eloquently talked about them just now. I have said before, and I will repeat again, I think these loopholes actually incentivize people to travel thousands of miles, pay cartels huge amounts of money. A lot of the women are getting raped. We have had evidence how children are being abused by the cartels. So changing some of these loopholes and clearing them, I think, is—will help mitigate the entire problem.

I think all of us care about people that are being abused. If somebody is being raped by cartels, or children being abused by cartels, of course, none of us up here would want to ignore that. But there is a difference in how we should mitigate the problem.

So, Mr. Homan, I have 6 bills that I have introduced and sponsored that would try to clean up these loopholes to stop incentivizing people from coming here. One of them is to raise the credible fear standard for asylum, because, as you said, the initial standard is too low, as evidenced by the numbers. I mean, like 85 to 90 percent of them passed the initial phase. But then, you know, a huge number—what is it, 86, 87 percent—when they finally go in front of a court, don't.

So if we solve that problem with the loopholes, how would that affect this going back to Mexico, the MPP protocol? Could we get rid of it, do you think?

Mr. HOMAN. Well, certainly you will be able to have an effect on it, because if we had a meaningful asylum bar that people couldn't come up and just claim to say 2 or 3 key lines to get approval, they stop coming.

Because, look, the bottom line is the data at the immigration courts are clear that 87 percent of these people do not qualify, or fail to show up. So if they know before they leave their homeland, spend their life savings making this dangerous journey, that the chance of getting approved—because they know they are not escaping fear and persecution from the government because of race, religion, political beliefs—they will stop coming.

In—enforcement law has a meaningful effect. You look at consequence, deterrence. It means something.

A couple of things I just want to add to this is I have heard a lot of testimony here today, but, you know, I am hearing today that people think the system is rigged against the immigrant now. But the approval rates and the denial rates have not changed from fiscal year 2014, 2015 to today. So if there is a fix put in, the denial rates back in 2014 and 2015, under our first family detention center, we are still about 87, 90 percent.

So the denial rate remains the same. So I don't see the correlation in this fix, then. As far as representation, does representation make a difference? If you are looking at year-old data, the approval rate is anywhere from 10 percent to—high to 20 percent. Representation rate has not changed beyond 20 percent, even the represented by attorney. That is tracked in the ERO datasheet.

So representation really doesn't make a difference because they don't qualify, and the representation is not going to change the facts of the case. This is all available on the immigration court database.

Mrs. LESKO. Thank you, Mr. Homan. Another question I have for you, Mr. Homan, is it fair to say that right now the immigrants that are seeking asylum that are in Mexico, waiting, are they able to say that, "Oh, I am afraid to be in Mexico," and have—you know, get a hearing on that?

I think my data says that, yes, they are. Fear screenings are an established part of the program. As of October 15, 2019, USCIS completed over 7,400 screenings to assess the fear of return to Mexico. So people that are in Mexico under this program can actually say, "I am afraid," and go in front of someone.

Mr. HOMAN. Well, that interview is in the beginning, when they enter the United States. If—they cannot be returned to Mexico if they establish a clear danger to return to Mexico, that they would be, you know, in harm's way. So that is in the front. They can't be sent back to Mexico without that interview occurring that there is no fear to return to Mexico.

Mrs. LESKO. I—

Mr. HOMAN. That is on the front end of that.

Mrs. LESKO. All right. And—

Mr. HOMAN. I want to add one thing.

Mrs. LESKO. Sure.

Mr. HOMAN. I do think there are some in Central America that qualify for asylum. So, you know, I am not painting with a broad

stroke saying it is all fraud. But based on the data and the findings of the judges across this country, 80 percent, 87 percent do not.

There are certainly people who certainly do fear return to the homeland. But the problem is, when you got 80 percent rate of denial and fraud, you are backing up the system for the people in this world that are really escaping fear and persecution from their homeland, such as some of the African nations, other nations around the world who really do need our help. The system is being—it is—the—so asylum claims are up over, you know, 2,000 percent last couple years. It is troubling for the ones that really do need our help.

Mrs. LESKO. I agree. I yield back.

Miss RICE. Thank you. I just want to take note that, you know, there are a lot of numbers being thrown around. Eighty-seven percent of people don't show up for their first hearing. There is some DoJ information that says that that number is actually 85 percent of people who do show up.

If you look at our TRAC, which is the system that is housed at Syracuse University that more closely tracks EOIR immigration court proceedings, they note that DoJ is starting to limit the access to the database.

There was just a recent story in *The Washington Post* that did a long fact check—and I know we can disagree about the accuracy of *The Washington Post*. This is just for future discussion. *The Washington Post* did a long fact check story on the numbers that Republicans use when talking about this issue.** The 90 percent no-show rate that that is referred to consistently was—that number was actually quoted by the former Acting Secretary McAleenan in a Senate Judiciary hearing a few months ago that he ultimately had to walk back. He was referring to a pilot program being used on only 7,000 cases.

So my point is that I think for us to have a real conversation about this, we have to get real numbers. I think Democrats and Republicans, especially on this committee, we should be able to agree with an accurate number. I think maybe we can—I am hoping the Ranking Member would agree that maybe we could kind-of work on that as a project so that we don't have these—back-and-forth numbers, where we are saying—you are saying 85, we are saying 80, and it is just back and forth, and we are not really getting to any problem solving.

Thank you for that. I mean I thank myself for giving me 2 minutes to say that.

The Chair now recognizes for 5 minutes the gentleman from California, Mr. Correa.

Mr. CORREA. Thank you, Madam Chair. I hope you don't take those 2 minutes off of my 5. Thank you very much.

Let me, first of all, thank the witnesses that are here today.

I had a chance, over the last year or so, to visit some of the refugee camps in Tijuana. There are some very good faith-based refugee camps providing excellent services. There I saw a doctor from Colombia, and doctors from all over the world providing for those

**The information has been retained in committee files and is available at <https://www.washingtonpost.com/politics/2019/06/26/how-many-migrants-show-up-immigration-hearings>.

refugees. Then I went later on, when they closed after 9 p.m., 10 p.m., I saw a lot of people outside the faith-based refugee camps. There is just not enough room for the services.

So, yes, some services, but not enough. I know the mayor of Tijuana is screaming, because he is overwhelmed and does not have the resources to address refugees, not just from Central America, but from all over the world. That is the challenge at the Southern Border.

I also went and I visited—I talked to the person who is keeping a so-called list, not controlled by the United States. But picture this: A refugee come to the border and they are turned away, and they said—they say, “You have to sign up for a number so you can be heard.” Well, where do I sign up? Well, that person over there.

I asked that person over there, “Who do you work for, the U.S. Government?” No. “Do you work for the Mexicans?” No. “Who do you work for?” Just a person that set up. He is giving out numbers. Return when your number is called. Give us your cell number. A very questionable way of doing business. But none the way—that is the way it is being taken care of.

Also, I had the chance of going to Guadalajara, Mexico a few months ago, as well, driving down the street and I saw a homeless person barefoot. I happened to pull over and I asked them some questions. He said, “Yes, I am from Guatemala. That is as far as I have gotten, I have no food.” My point to you is the refugee crisis is also hitting throughout all of Mexico, not just the border area.

I am going to make it very quick. But, Mr. Homan, you talked a little bit about the work permits. You mentioned that these folks come to the United States, whatever the percentage of people that show up, and what they want is a work permit, and waiting for the next amnesty. I don’t think we have passed an amnesty in a very long time.

I am thinking also to that raid in Mississippi in the Chairman’s region, where 400 or 500 individuals were picked up. I got a phone call from one of the representatives of that poultry plant called me and saying, “We need to do something,” he said. “Most of the workers here—all the workers here are refugees, and they are taking jobs the locals will not take. They are taking jobs that the children of the refugees will not take. We need to have the jobs back.”

According to the Chairman—I heard him speak—oh, he is gone, darn it. But the raid essentially disrupted the whole economy of the area.

So my point to you, Mr. Homan, would you support some kind of a—not only change in the loopholes, which I would consider to be not loopholes, but the law, but would you support some kind of an adjustment to the law so that more folks can come to the United States and work legally? Because right now we have this gray market in this country of workers that are contributing to this economy, yet they are working in the gray area because they can’t get an adjustment of status.

Mr. HOMAN. OK. To your first question about the amnesty question, these family groups started coming across in fiscal year 2013 and 2014. That was our first surge.

Mr. CORREA. OK.

Mr. HOMAN. That was on the heels of DACA. So these family units coming across now—that is your next DACA population, because they are going to say these children were brought to the country through no fault of their own—34 years in business—

Mr. CORREA. To qualify for DACA—

Mr. HOMAN [continuing]. They are not—

Mr. CORREA [continuing]. You have to follow the law; you have to have a job. You have the, essentially, a clean record, correct?

Mr. HOMAN. When you throw out something like that, when you—for instance, when you start talking about—let's talk about an amnesty program. You are going to see the numbers on the border go up. It is an enticement.

So these family groups coming across now, the 200,000 that came across the last 2 years, I don't know what is going to happen with DACA with the Supreme Court, but this is your next 200,000 people who say, "How about us? We came"—

Mr. CORREA. Get to my—

Mr. HOMAN. My point was—

Mr. CORREA. I have got 30 seconds. So—

Mr. HOMAN. The second issue is, sir, I do understand if there is a need for labor in this country because the unemployment rate is so low, then yes, I think Congress should legislate something. As a matter of fact, when I was the ICE director, I tried to get—

Mr. CORREA. Let me just say—

Mr. HOMAN [continuing]. Program, because—

Mr. CORREA. Economic factors are a great motivator for people. They have been for the last 200 years. Would you support some kind of a Marshall Plan for Central America to stabilize that region, and to address the needs of those folks?

Mr. HOMAN. I think the Secretary—when I was ICE director, Secretary Kelly, I went with him into Miami and met with leadership from Central America, along with American businesses and big banks, trying to create opportunities for them in their homeland. I certainly would support creating opportunities for Central Americans in their own country.

Mr. CORREA. Madam Chair, I am out of time. Thank you very much.

Miss RICE. Thank you. The Chair recognizes for 5 minutes the gentleman from Mississippi, Mr. Guest.

Mr. GUEST. Thank you, Madam Chairman.

Mr. Homan, first I want to thank you for your 34 years of service to our country. In reading your testimony, the written statements that you prepared, on the first page you kind-of talk a little bit about historically what we are seeing today versus what we have seen in years past. Could you expand on that just a little bit, please, sir?

Mr. HOMAN. I think what we are seeing today could have been prevented if Congress was to close the loopholes we have asked them to close.

I mean, we proved back in fiscal year 2014 and 2015, when I worked for Secretary Jay Johnson, whom I respect greatly, you know, he let us build family detention to hold family units in the family residential center along—to see a judge. It took about 40, 45

days. Most of them, 90 percent, lost their cases and we sent them home. The numbers went down. It worked.

So we are asking Congress, look, we have already proved this worked under the Obama administration. How come we are not doing it now?

You know, so I think Congress needs to fix this loophole. Let us detain—if they are really escaping fear and persecution and death, I don't see a problem in being in a family residential center with medical care, pediatricians, child psychologists on staff, 3 squares a day, 6 sets of new clothes, access to lawyers, access to families. These are open-air campus facilities.

If it saves a life—and that is what I have been testifying the last 4 times. This isn't just about securing our border. This isn't just about enforcing laws. It is about saving lives. It is about 31 percent of women being raped.

If we close these loopholes, we are going to save women from being sexually assaulted. We are going to save children from dying. We are going to stop bankrolling criminal cartels who are making millions of dollars a day because of the laziness of this country not to fix the loopholes.

Mr. GUEST. You quote our—give several statistics there in your written testimony. I think that those are very important. Are those statistics that you give, are they supported by your 34 years of service to our country?

Mr. HOMAN. Absolutely. One caveat the Chairwoman mentioned, the 87 percent. I did not say 87 percent did not show up at a hearing. I said 80 percent lost their case. So that rate varies, but every number I quoted today in my testimony, and the numbers I just recently quoted, came off the Executive Office of Immigration Review, the Immigration Court website. They are open to the public. I printed these up last night. So these are the immigration court's own data. This is not my data. This is data coming from the immigration judges.

Mr. GUEST. Let me ask you about a couple of those statistics that I pulled from your report, and just tell me if they are accurate, to the best of your knowledge.

Seventy percent of illegal immigrants coming into the country now are family units. Is that accurate, to the best of your recollection or best of your knowledge?

Mr. HOMAN. Seventy to 72 percent. It varies every month.

Mr. GUEST. All right. Then it says here, as I see, that roughly 90 percent of all family units fail to show up for court proceedings.

Mr. HOMAN. That was—I quoted the Acting Secretary McAleenan when he made that statement.

That number does vary, depending on when you look at it, and what city you look at. It can go anywhere from 90 percent not showing up to 40 percent not showing up. It depends on what court you look at. So that number fluctuates so much. So that 90 percent number I use, I quoted the Secretary, as the Chairwoman mentioned few minutes ago, in his testimony 6 months ago.

Mr. GUEST. What about 85 to 90 percent don't qualify—for those that do show up, then, or 85 to—

Mr. HOMAN. That is—

Mr. GUEST. Ninety percent don't qualify for asylum.

Mr. HOMAN. That is immigration court data. It shows that it is anywhere from 13 percent, 12 percent, 13 to 15 percent for the 3 Central American countries that do not—that get a meritorious claim, 13 to 15 percent, which means 87 to 85 percent lose their case.

Mr. GUEST. Then those that are ordered to be removed, less than 2 percent actually were removed or left the country. Is that correct?

Mr. HOMAN. Actually, it is closer to 1 percent, but I was generous saying 2 percent. It is actually—it is 1.6 just recently, but it has been 1.2 to 1.6.

So it is, yes, most do not leave. That is another enticement. That is why more people keep coming, because families in Central America, even though they know most will lose their case, they are not going home.

Mr. GUEST. There is, as I understand from your reporting, an 800,000-case backlog in the immigration court. Is that correct?

Mr. HOMAN. It is now over a million. There was 800,000, but I went to the website last night and they are reporting a million.

Mr. GUEST. Would you agree that these figures are staggering, Mr. Homan?

Mr. HOMAN. Absolutely. I mean, the—when I was the ICE director the backlog was already near 600,000. So what has happened in the last 2 years? Yes, it sounds right to me.

Mr. GUEST. You say on page 3 of your report, you say illegal crossings are down, consistent from the high in May, but we are still at high numbers beyond last year.

Then this is the sentence I want to highlight: “The significant gains made on this issue are because of our President and the men and women of CBP and ICE, and not because of anyone in this room.”

First of all, I want to apologize to you that Congress has failed the American people. I would ask for you to deliver a message. Please tell the men and women of CBP and the men and women of ICE that we appreciate their hard work and what they do, and that there are still Members of Congress who want to solve this problem.

Thank you, Madam Chairman. I yield back.

Miss RICE. Well, I would agree with that statement. I think every person on this panel, on either side of the aisle, agrees that every CBP officer should be commended for the hard work. I don’t think that is even an issue. We all want to come to a solution, obviously.

The Chair now recognizes for 5 minutes the gentleman from New Jersey, Mr. Payne.

Mr. PAYNE. Thank you, Madam Chair. I have some questions I want to answer, but I think I want to go to Ms. Vela.

In reference to the questions and the comments made by the honorable Ranking Member, when we talk about torture and the incident of torture that you were privy to, I don’t think that we can make light of just 1. One is 1 too many. Normally, if there has been 1, there has been more than 1. It opens a can of worms and a prospect of that becoming a norm with respect to torture, because I have a family, I have a—triplets and a wife, and just the prospect

of thinking they were subjected to that is horrific. So 1 is 1 too many.

Can you elaborate any more on that issue?

Ms. THORN VELA. Certainly. Thank you, Congressman. Yes. It is very prolific in—throughout the country of Mexico, particularly at the northern border, that cartels will often kidnap individuals and extort family members for money. It is a practice that the U.S. Government has also detailed in other years.

So MPP is providing people—very often people will be kidnapped and tortured on their way up, and then the U.S. Government will return them south for them to be subjected to a second round of kidnapping and torture. It is an extremely common occurrence. Every person that I know at the camp has told me that they live in fear of that happening.

Mr. PAYNE. Thank you. The doctor, Schneberk. How, in your view, does the Remain-in-Mexico place vulnerable individuals and families at risk of the type of harm your organization identified as commonly affecting immigrants?

Dr. SCHNEBERK. So what is the question, again?

Mr. PAYNE. How does the Remain-in-Mexico Policy place vulnerable individuals and families at risk of the type of harm your organization has identified as commonly affecting immigrants?

Dr. SCHNEBERK. Thank you for the question, Representative. So a number of ways.

No. 1, the safety issue of, you know, these people, who have been through so much, are already at heightened risk of further mental health decline or mental health kind of effects, hits they can take from being in an unsafe environment or having to live with that fear has numerous—both manifesting mentally, as well as physically.

In addition to that, putting them in a situation where they are not able to feed themselves, house themselves, be able to access, you know, things that make a person able to be healthy is especially difficult and, obviously, has health effects. There is just a litany of things you could talk about.

But one of the main things is really just how can they live being unsafe, considering what they have already gone through.

Mr. PAYNE. OK. I lost my place. All right. Ideally, what type of medical care and resources would be most important for these people?

Dr. SCHNEBERK. So, starting from a standpoint of putting them in a safe environment where they can address their needs, from the standpoint of just being able to speak about what has gone on, what has happened to them, the state they are in, and their ability to answer questions from the standpoint of having PTSD, having depression, anxiety, and really, starting with that kind of baseline floor of kind of what they call in trauma-informed care just a safe environment, then moving on into, you know, as far as mental health evaluations, mental health therapy, treatment, medication, as well as physical care, basic primary care, all the things that we hold dear in public health and medicine to keep people safe, healthy.

Mr. PAYNE. Well, thank you. Thank you for your time. Madam Chair, I yield back.

Miss RICE. Thank you. The Chair now recognizes for 5 minutes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Madam Chair. Thank you, Madam Chair. My microphone seems to be weak today, but I trust that you can hear me. I would like to focus on something that has happened as of late.

There is an organization styled Save the Children. It has been around for 100 years, and it has been involved in the business. It has been involved in the business of saving children. Thank you very much. This organization has indicated to us that, since January 2019, 13,000 children have been returned, that 400 of them are infants. This is about children. So I have a few questions.

The first is—and I would like for you to raise your hand if you agree with this policy—the first is do you approve of family separation, as a policy? If so, raise your hand.

Let the record reflect that no one approves.

If you approve of holding children in cages, raise your hand.

Let the record reflect that no one approves.

If you approve of de-funding aid to the countries that migrants are fleeing, raise your hand.

Let the record reflect that no one approves.

There was something called wet foot, dry foot. Some of you may be familiar with wet foot, dry foot. If you are familiar with what was called the wet foot, dry foot policy as it related to Cubans, would you raise your hand, please?

All of the members, let the record reflect, are familiar with wet foot, dry foot.

Wet foot, dry foot required that a person emigrating from Cuba get one foot on dry land. With one foot on dry land you could walk right on into Florida, usually, and you would be on a pathway to citizenship with one foot on dry land. I am not saying that we have to have a wet foot, dry foot policy, but I do believe that we have to have a humane policy that respects children, that does not harm children.

This is what Save the Children is all about.

I would just simply ask Mr.—let me make sure that I have your name correct, sir.

Mr. Homan, sir, what type of policy do you envision that will help children, children who are fleeing harm's way with their parents, usually, or some significant person in their lives, have the opportunity to be in a safe, secure, wholesome environment?

Mr. HOMAN. Well, first of all, if I can—your question about raise your hands, if you would have said if I support zero tolerance, I would have raised my hand. Not family separation. Zero tolerance. We seem to confuse those two issues.

Mr. GREEN. OK. Well, if you would, I am going to ask that you kindly address my question.

But since you raised zero tolerance, I am not sure what you mean by zero tolerance. Are you saying zero tolerance that no one ever coming to the United States? Is that your zero tolerance policy?

Mr. HOMAN. No. You are referring to family separations that have happened under numerous Presidents, not just this President.

Mr. GREEN. OK, so—

Mr. HOMAN. But a zero tolerance, what you are referring to is family separation, zero tolerance. That was put in place by Attorney General Jeff Sessions. It was zero tolerance to prosecute those who knowingly and intentionally violate our laws.

Mr. GREEN. So—and supporting that policy, you would support family separation, then.

Mr. HOMAN. Whenever someone gets arrested for a crime, they get booked into a jail. Their child can't go with them, just like if I got arrested tonight, my child couldn't go with me. So it is not about family separation, it is—

Mr. GREEN. Well, the interesting thing about your argument is that these people committed no crimes.

Mr. HOMAN. You enter the United States illegally, it is a crime. Is a 8USC—

Mr. GREEN. Hold on.

Mr. HOMAN [continuing]. Eight United States Code 1325, it is a crime to enter the United States illegally.

Mr. GREEN. It is not a crime; it is a civil offense.

Mr. HOMAN. No, sir, it is not. It is a violation of the criminal code. Title 8, United States—in the United States Code, 1325, illegal entry in the United States. The first offense is a misdemeanor. Second offense, if you have been ordered removed and returned, is a felony.

Mr. GREEN. I agree with that. I don't differ with you on that point. But you would then separate the children.

Mr. HOMAN. If—you have no option. If someone is being prosecuted and getting sent to U.S. Marshal's custody or to the local jail, the child can't go with them. It happens to U.S. families every day across the country.

Mr. GREEN. All right. Let's have Mr. Knowles's response, please.

Mr. KNOWLES. What would you like me to answer, sir?

Mr. GREEN. The separation of children based upon policy that was in place.

Mr. KNOWLES. You are asking the view of our members?

Mr. GREEN. Yes.

Mr. KNOWLES. I believe I said earlier that our members are trained asylum officers, we are not law enforcement, but we believe that our mandate is to ensure that asylum seekers have due process and are treated humanely during the pendency of their claims. It is well-known in the law and in the international conventions that an asylum seeker has the right to due process, regardless of their manner of entry.

They—we do not believe that it is correct to separate families or to prosecute individuals who are seeking asylum. They ought to have their asylum cases heard. If they prevail, they should be allowed to remain. If they don't prevail, then there are legal processes for their removal. But we don't support the separation of families under any circumstances.

Mr. GREEN. Is there anyone else who would like to respond?

Miss RICE. There is no—I am sorry. I am sorry, we have 3 other people, I am so sorry.

Mr. GREEN. Thank you, Madam Chair.

Miss RICE. Thank you. The Chair now recognizes for 5 minutes the gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Madam Chair, first of all, I want to thank you for holding this hearing. I echo your words, which were we have to find a solution and a resolution.

I also echo your words, for someone who served on this committee for a very long time, and you have been here, and others, that we do not quarrel with the service of the men and women in this Department. What I do say is that they are being impacted by untoward policies, which makes it very difficult to do, I think, the duty under the values of this Nation.

I have stated early on that this is a country of immigrants and a country of laws. No one negates the idea of laws. So I am going to raise these questions and pose them to a number of witnesses.

The Remain-in-Mexico and the port courts are the latest legally questionable step in the Trump administration's anti-immigrant agenda, i.e. the Muslim ban, another untoward action, I believe, as relates to immigration policies. Rather than deter asylum seekers, these policies promote cruel and human rights violations.

So I would like to raise that question—and my time is short—raise that question with Laura Peña with the pro bono American Bar Association. Do these policies create cruelty and human rights violations?

Ms. PEÑA. Yes. Thank you for the question, Congresswoman. Particularly, when it comes to issues regarding the tent courts that you raised, attorneys have very limited restricted access to these tent courts. Asylum seekers who are appearing in these tent courts do not have access to simultaneous interpretations. So they quite often have no idea what is going on in these proceedings.

The ABA has long believed and promoted access to in-person interpreters for proceedings, and especially when it pertains to non-citizens. Any video conferencing for non-citizens should be done with their consent. Thank you.

Ms. JACKSON LEE. I thank you. Ms. Vela, would you comment on the idea of creating cruel and human rights violations?

Ms. THORN VELA. Yes, Congresswoman. From everything that we see on the ground—we work in a 2,000-person encampment at the foot of the Gateway Bridge that is across from Brownsville. There is not enough food. There is not running water. Until very recently, immigrants had to get into the Rio Grande to wash their clothes and wash their children. We see this camp growing at an alarming rate. We have only had MPP since August, and it is grown three- or four-fold.

Ms. JACKSON LEE. You are not arguing against having a country that has immigration laws. What you are saying is the MPP program creates an atmosphere and an actuality of cruelty. Is that correct?

Ms. THORN VELA. Yes, Congresswoman. There is no question that this particular policy has eroded everybody's access to asylum, access to a safe place to seek asylum, and safety while they await their court date.

Ms. JACKSON LEE. You can't see this, but I am looking at a visual of squalor that is probably not even in the places where they have come from. That is tents and tarps. Have you all seen this on the other side of the border?

Ms. THORN VELA. Yes, Congresswoman. That is—I can't see the photo, but certainly tents and tarps for 2,000-plus people is what we work with every day.

Ms. JACKSON LEE. I see a person walking with a face mask. I know you can't see it—and clothes hanging over.

So let me quickly go to the doctor. By forcing asylum seekers to wait for months in Mexico border cities where cartels and other criminal groups are highly active, the Trump administration subjecting men and women and children to a greater risk of kidnapping, assault, and extortion, which, as a physician, also impacts the quality of life of these individuals, Doctor, if you would?

[No response.]

Ms. JACKSON LEE. Doctor? I am sorry, I am calling you—yes, doctor. Dr. Schneberk, did you hear the question?

OK. Let me just go on. Through—DHS is providing asylum seekers with incomplete or inaccurate paperwork, including wrong addresses or dates for hearings, which further complicates matters, and could lead to people's claims being rejected through no fault of their own.

Could one of the lawyers answer that question?

Doctor, I was asking you does the squalid conditions generate—that are creating risk for kidnapping, assault, and extortion impact health. But can you—let me have the question about the inaccurate paperwork, if one of the lawyers would respond to that, and maybe you could respond to the other question. Thank you.

Ms. PEÑA. Thank you, Congressman. The notice to appear, which are the charging documents issued by Department of Homeland Security, have several legal inefficiencies—insufficiencies, including the address. So individuals cannot get proper service of their notice to appear because the address is incorrect. The address is shelters that they have never even been to.

In addition, the NTAs are incomplete. There are no boxes checked, which are required, which establish how the individual entered the United States.

Moreover, there is manufactured charges. So individuals who entered between ports of entry are being charged as removable as arriving aliens. That is a legal fiction that is being created on these notices to appear.

Moreover, improper courts are being issued on these notices to appear. For example, where we practice in South Texas, the Harlingen court is the court where individuals are supposed to appear. That is—it is actually incorrect. They appear in Brownsville. Thank you.

Ms. JACKSON LEE. Doctor.

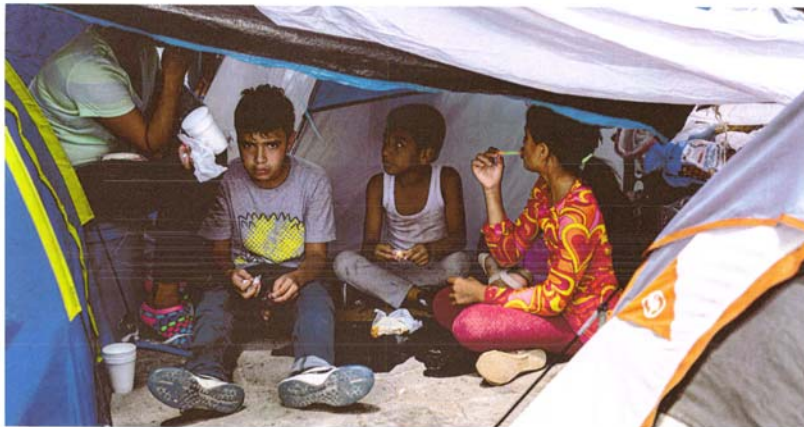
Dr. SCHNEBERK. So, yes, real quick. I mean, I participated in a forensic evaluation of a patient just last week that—she is in her house, she is fleeing abuse, rape. She is afraid to leave that place she is renting. She leaves maybe once a week just to get groceries with her—she is sitting there with her two kids. Can you imagine the kind of psychological harm that is causing to her? Because she knows, through family that have sent her a message, that the perpetrators have sent somebody after her to Tijuana.

Ms. JACKSON LEE. I thank the Chair, and I thank you all.

I just want to put into the record, ask unanimous consent the conditions that are being considered—the conditions that exist pursuant to the MPP program on the other side of the border, and the doctor's comments of the fear of death because cartels are sending people after the people who are fleeing evidences that they are being stalled on their asylum process. Thank you.

Miss RICE. They will be received into the record.

[The information follows:]





Miss RICE. The Chair now recognizes the gentlewoman from California for 5 minutes, Ms. Barragán.

Ms. BARRAGÁN. Thank you, Madam Chair. Let me start by—I want to—echoing some of the comments from my colleagues about the outrage that should be happening over the return of migrants into dangerous places.

Ms. Thorn Vela, I understand that you have visited some of these facilities. Out of the 6 locations that have been implemented, the Remain-in-Mexico Policy, 2 of them are across from Tamaulipas, an area of Mexico that the State Department has designated as a level 4, do-not-travel location. I understand you have been there. Could you please describe the danger of violence and crime migrants and those in the encampments near ports of entry in this area are at risk of being subjected to?

Ms. THORN VELA. Yes. The cities in Tamaulipas were the last cities to get roll-out of MPP. A partner of ours that works in Ciudad Juárez told us that she was horrified when she heard that people would be removed to Tamaulipas.

Particularly in the city of Nuevo Laredo—I don't work there, personally, but advocates on the ground there have told me that people have walked out of Mexican migration and literally been kidnapped on the doorstep of Mexican migration offices.

Individuals in the early days were moved to the city of Reynosa before they decided to have tent courts in Matamoros, which is about an hour away. There are people still today in Reynosa that are terrified to make the hour journey south to their court hearings. They don't know what to do. They have heard so many stories of people being kidnapped again, possibly right out front of the door of a shelter that they stayed there to try to work through their case. They have no way to get even an hour down the border.

The state of Tamaulipas asked the government to stop sending people to Reynosa because it had no way to get people to Matamoros.

Ms. BARRAGÁN. It is really horrifying, when you read some of the accounts of what is happening, and in some instances, where you

have officials, Mexican officials, turning over people to the cartels, and what is happening to them, and the danger, it is just outrageous.

It feels to me as though our Government is saying, well, as long as it doesn't happen on our land, as long as it doesn't happen here, it is OK. Let's go take them back to wherever we want to take them back to. We are just ignoring the harms.

When we had Secretary McAleenan come in, it was clear that the United States didn't bother to assess any type of the risk and the harm that would be done to migrants if they were being sent back to these level 4 places, which is the equivalent of sending them back to Syria. I mean, it is outrageous.

Ms. Peña, I know that you provide—you know lawyers that are working to provide services to people. Can you tell us a little bit? Have you represented migrants in merit hearings?

Ms. PEÑA. Yes. Thank you for the question, Congresswoman. I actually have a merit scheduled for this Friday.

If I may explain some of the challenges that I faced in representing individuals placed into MPP proceedings, to find my client, first of all, I participated in a volunteer asylum workshop. We are in a hot sun, in a plaza just across the port of entry. Volunteer attorneys conducted asylum workshops to screen applicants. That is how I met my client. It was in a volunteer capacity in Matamoros.

To get access to the tent court I also filed a motion with the immigration judge to ask him, "Please allow my client to come into this multimillion-dollar tent court a couple of days before the hearing, so we can prepare in a safe environment." That judge denied my motion, based on a lack of jurisdiction, because DHS controls the tent court facility.

Although I—this will be my first merit—local attorneys who have won cases—imagine winning your asylum case, and then having your client sent back to Mexico after winning. It causes attorneys to go to extreme measures to protect their clients. Even after winning their proceedings, after having meritorious claims to not be sent back to dangerous situations—it is horrendous.

Ms. BARRAGÁN. Well, thank you. As somebody who actually—long ago, when I practiced law—represented a woman and child in an asylum case, a lot of work goes into it, a lot of prep. Not having access to your client prevents you from doing that very necessary preparation.

We know, we have seen the statistics from—people who have access to counsel and legal representation have a much higher ability to get—have a successful claim. So it feels as though this is just another attempt to make sure that people don't have that access, don't have that ability, so that they can succeed, because this administration is doing everything they can to end legal immigration. Asylum is legal immigration.

Thank you all for your work and what you are doing. We will continue to highlight the horrors of the Remain-in-Mexico Policy and the MPP program.

Thank you. I yield back.

Miss RICE. Thank you, Ms. Barragán. The Chair recognizes for 5 minutes the gentlewoman from Texas, Ms. Escobar.

Ms. ESCOBAR. Madam Chairwoman, thank you so much for having this hearing. This is so critical, so that the American public understands what is happening at the hands of the American Government. Thank you for allowing me the opportunity to address our panel and ask questions.

Thank you for coming to the border and coming to El Paso. You and many of your distinguished colleagues, our distinguished colleagues, have made the journey so that you can see for yourself what is happening through your own eyes in order to help change what is an important policy.

To our panelists, thank you so much for being here today. I cannot tell you how profoundly moving your testimony was earlier. I can't imagine anyone listening to your testimony, listening to what is happening at the hands of the American Government, and believing that this policy should continue, this anti-American, deeply harmful policy.

I know full well about MPP because I represent El Paso, Texas. Our lawyers, our advocates, our community members have, unfortunately, had to bear witness to what is happening at the hands of the American Government. Almost 20,000 vulnerable lives have been pushed back, either through metering or through MPP.

What we have seen happen—I have described as a new ecosystem of criminal activity created by this policy on the other side of our ports of entry, an ecosystem where the American Government's policy is literally sending vulnerable migrants into the hands of cartels, so that cartels can extort money after they have kidnapped people.

We have had lawyers tell us about clients who have been raped multiple times. We have had lawyers tell us about clients who have disappeared altogether, people who are in the legal asylum process. These are people who have been denied due process and, indeed, have put—have been put in danger.

Earlier one of our colleagues expressed concern about the Department of Homeland Security personnel not being here today. I have, Madam Chair, sat through hearings where we have DHS leadership at the highest levels, essentially deny—tell Congress that none of this is happening. So it is important to hear from the people who are here to speak the truth and tell us what is happening.

Mr. Knowles, is there any way that DHS leadership at the highest levels, at the Secretary level, is there any way that they would not know that these atrocities are happening in the Mexican cities where we are sending back migrants?

Mr. KNOWLES. I can't imagine how they could not know. Our own agency, USCIS, has a country of condition, country of origin research unit. They have produced many reports documenting the conditions in the Northern Triangle and in Mexico.

I believe there was—there have been many investigations by the Department of those conditions. Certainly these things are well known.

Ms. ESCOBAR. Ms. Peña—thank you, sir. Ms. Peña, do you think there is—and Ms. Vela, do you think there is any way that the Secretary of the Department of Homeland Security or anyone in leadership or in the White House could be unaware of these atrocities?

Ms. PEÑA. Thank you for the question. A number of organizations have come down to the border in south Texas and have escalated their request for—one example, for access to the tent court. They have been denied that access at the highest levels.

So, as we understand it, it is at the highest levels that these directives are coming from.

Ms. THORN VELA. Yes, and we work with our clients to present them to CBP officials at the bridge when people are erroneously placed in MPP, or they have developed a condition that makes them, you know, extremely vulnerable in Mexico, and we have also raised that issue with port directors and people higher up. You know, we—there is very little chance that doesn't get back.

Ms. ESCOBAR. Thank you. This is why I have introduced H.R. 2662, the Asylum Seeker Protection Act, to de-fund MPP.

Madam Chair, I would like to introduce—I would like to ask for unanimous consent to introduce 3 articles: An article by the *LA Times*, *Vice News*, and a series of stories on—in NPR detailing the heinous occurrences happening at the hands of the American Government.

Miss RICE. They will be accepted into the record.***

Ms. ESCOBAR. Then, just a final show of hands. There has been so much publicity around the atrocities of MPP, there is absolutely no way that the highest levels of DHS leadership could be unaware of what is happening. Since all of this has blown wide open, have you all seen any improvements to the lives of these vulnerable migrants, the Government reversing any of what it has done? A show of hands.

Let the record reflect no one has seen any improvement since the publicizing of MPP.

Madam Chairman, thank you so much. I yield back.

Miss RICE. Thank you, Ms. Escobar. I would like to recognize Mr. Green for a clarification.

Mr. GREEN. Thank you, Madam Chair. I promise to be terse.

Madam Chair, Mr. Homan has brought us to the heart of the problem, and that is this administration concludes that asylum seekers are criminals. They are not criminals. It is not a crime to seek asylum in the United States of America. When you treat them as criminals, somehow you conclude that it is OK to lock their children up in cages. But they are not criminals. We have a criminal mentality as it relates to the people who are coming to this country from south of the border. That is what we have to confront. That is the gravamen of this circumstance: A criminal mentality for people who are seeking a lawful process called asylum.

I thank you, and I yield back.

Mr. HOMAN. Can I respond?

Miss RICE. This was just a clarification.

Thank you, Mr. Green.

Mr. HOMAN. But that clarification is inaccurate.

***The information has been retained in committee files and is available at <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral>, https://www.vice.com/en_us/article/pa7kkg/trumps-asylum-policies-sent-him-back-to-mexico-he-was-kidnapped-five-hours-later-by-a-cartel, and <https://www.thisamericanlife.org/688/transcript>, respectively.

Miss RICE. No, the—I believe the clarification the gentleman was making was that he was not claiming that claiming asylum was—what he was saying was not that crossing the border was not criminal, but that claiming asylum was not criminal. That is the clarification that I believe the gentleman made.

I want to thank the witnesses for their valuable testimony, and the Members for their questions.

I ask unanimous consent to enter into the record statements of support from a number of relevant organizations, including among others the American Immigration Lawyers Association; the American Immigration Council; the Children's Defense Fund; and Refugees International.

[The information follows:]

STATEMENT OF AFL-CIO

TUESDAY, NOVEMBER 19, 2019

America's welcome mat, long a beacon of hope for immigrants, refugees, and asylum seekers, is being bulldozed and paved over, replaced with a clear message: "You're not welcome here." The labor movement vehemently opposes the inhumane policies being inflicted on families at our Southern Border and insists that uplifting worker rights and standards throughout the region should be a key aspect of humane border policy.

This October, the AFL-CIO coordinated a high-level labor delegation to El Paso and Ciudad Juárez to witness first-hand the impact of "Remain in Mexico" and other punitive border policies. Union leaders from all sectors of the economy and all parts of the country heard directly from asylum seekers, deported veterans, and Mexican workers who are organizing for basic rights and standards. Their stories inform our statement for this hearing.

In addition to violating core values and democratic principles, our Government's policies are now generating a large pool of vulnerable migrant workers in Mexican border communities. We therefore urge the subcommittee to consider not only the significant human rights and legal implications of the "Remain in Mexico" policy, but also its economic, labor, and trade-related ramifications.

"Remain in Mexico" is yet another prong of an ever-escalating agenda of criminalization, family separation, detention, deportation, and exclusion being pursued by this administration. Rather than cruelly detaining asylum-seeking families, our Government is now denying them entrance to our country and forcing them to wait without shelter or sustenance for indefinite periods of time in Mexican border communities. There were already more than 20,000 asylum seekers of all ages sleeping in the streets in Juárez when our delegation visited, and these families are enduring conditions that are by most measures even more dangerous than detention.

Compounding the harm of these inhumane policies, companies are now actively recruiting asylum seekers trapped in Mexico for manufacturing jobs in maquiladoras with a history of worker exploitation. There are a reported 50,000 openings for positions in factories in northern Mexico. Forcing migrant families to remain in these border communities creates a large and growing source of workers desperate enough to accept jobs under nearly any conditions as a means of survival.

Viewed in the context of USMCA negotiations, the use of anti-migrant policies to generate a vulnerable pool of workers for low-wage border industries becomes even more problematic. Such strategies seriously undermine efforts to raise wages and standards in Mexico, and further increase the challenges of implementing ambitious labor law reforms meant to improve working conditions and level the playing field for workers in the region.

Families in Central America and Mexico continue to face acute risks due to violence, lawlessness, and lack of decent work opportunities. Labeling their homelands as safe third countries denies the lived realities of working people. Instead of forcing migrants to remain in these dangerous environments, U.S. policy measures should focus on job creation and meaningful protection of labor and human rights in the region. An approach that actually addresses the root causes of forced migration would help reduce the push factors that breed desperation and drive people away from their homes and communities.

The labor movement categorically rejects the notion that only some working people deserve rights and respect, while others can be dehumanized, denigrated, or dis-

carded—as we see our Government doing to immigrants and asylum seekers at our Southern Border.

The forces of bigotry and white supremacy want to keep workers poor, weak, and divided. Union leaders travelled to the border last month to demand an end to the politics of division and hate that are fueling inequality and violence. Solidarity among working people is the best tool we have to overcome bigotry and promote equality in our workplaces and our society.

We urge Congress to denounce the “Remain in Mexico” policy and restore our Nation’s commitment to humanitarian immigration pathways, including robust asylum and refugee resettlement programs. Families fleeing violence and persecution must not be returned to harm’s way, nor is it appropriate to channel them into abusive temporary labor programs. Humane immigration policies should be aligned with a broader economic, trade, and foreign policy agenda focused on the development of decent work and shared prosperity for all, so that migration becomes a choice rather than a necessity.

Real security can only be achieved through humane approaches, and we will continue to demand justice for long-term members of our communities, our workforce, and our unions, as well as for those who newly seek refuge in our country.

STATEMENT OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

NOVEMBER 19, 2019

As the national association of more than 15,000 attorneys and law professors who practice and teach immigration law, the American Immigration Lawyers Association (AILA) is deeply concerned with the Remain in Mexico policy, also known as the Migrant Protection Protocols, which requires asylum seekers at our Southern Border to wait in Mexico until their requests for humanitarian protection are decided.¹

Remain in Mexico dramatically alters the processing of asylum claims at the U.S. Southern Border, making it far more difficult for asylum seekers to receive a fair and meaningful review of their claims. In January, AILA expressed grave concerns that the policy effectively denies asylum seekers their right to be represented by counsel and curtails their ability to receive a fair and meaningful review of their claims.² Additionally, the well-documented violence and instability that migrants face in Mexico exposes returned asylum seekers to severe risk of further trauma while they wait for their hearings.³ AILA has urged the administration to terminate Remain in Mexico and return to the long-standing practice of allowing asylum seekers to wait in the United States while their cases are being reviewed. In addition, many Remain in Mexico cases are heard in massive tent facilities in Laredo and Brownsville, Texas that function as virtual immigration courtrooms.⁴ These tent courts mount significant roadblocks to access to counsel, due process, and transparency.

While there are many troubling aspects of the Remain in Mexico policy, this statement focuses on how the policy effectively denies asylum seekers’ right to be represented by counsel. The collective experience of AILA members who represent asylum seekers subject to this and other policies makes us well-qualified to offer views on their harmful impact. In addition to being in touch with AILA members practicing on the Southern Border, in September and November AILA sent delegations

¹DHS Releases Policy Guidance for Implementation of the Migrant Protection Protocols, AILA Doc. No. 19012907 (January 25, 2019), available at <https://www.aila.org/infonet/dhs-implementation-migrant-protection-protocols>.

²Trump Administration Unveils More Severe Restrictions on Due Process and Asylum in “Remain in Mexico,” AILA Doc. No. 19012842 (January 28, 2019), available at <https://www.aila.org/advo-media/press-releases/2019/trump-administration-unveils-more-severe-restrict>; AILA Sends Letter to DHS Acting Secretary Detailing MPP’s Barriers to Counsel, AILA Doc. No. 19060336 (June 3, 2019), available at <https://www.aila.org/infonet/aila-sends-letter-to-dhs-acting-secretary-mpp>.

³Human Rights First, *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process* (August 2019), available at <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>; see also AILA and Advocates Send Letter Urging Secretary Nielsen to End the Migrant Protection Protocols Policy, AILA Doc. No. 19020631 (February 6, 2019), available at <https://www.aila.org/advo-media/aila-correspondence/2019/aila-and-advocates-send-letter-urging-secretary>.

⁴See www.nytimes.com/video/us/politics/100000006681200/border-immigration-tent-courthouses.html; Haley Willis, Christoph Koettl, Caroline Kim and Drew Jordan, *Trump Is Having Tent Courthouses Built Along the Border. Here’s What They Look Like.*, New York Times available at <https://www.nytimes.com/video/us/politics/100000006681200/border-immigration-tent-courthouses.html>.

to observe the effects of these policies in Brownsville, Laredo, and San Antonio, Texas, as well as Matamoros, Mexico.

BACKGROUND ON TENT COURTS

In September, DHS opened massive tent facilities in Laredo and Brownsville, Texas that serve as virtual immigration courtrooms for Remain in Mexico cases.⁵ During the hearings, asylum seekers are held in tents at the ports of entry while judges appear remotely via video teleconference from traditional brick-and-mortar courtrooms elsewhere. DHS chose to open these courts without meaningful notice to the public or the legal community and provided almost no information about even basic operations and procedures at the tent courts once they were operational. The location of these tent courts forces asylum seekers to wait for their proceedings in extreme danger in Nuevo Laredo and Matamoros, which have both been designated by the U.S. State Department with a level four “Do Not Travel” warning due to high rates of crime and kidnapping.⁶

HARSH CONDITIONS IN MEXICO PRESENT NEARLY INSURMOUNTABLE BARRIERS TO LEGAL SERVICES

To understand the impact of Remain in Mexico on the right to counsel, it is important first to understand the conditions that asylum seekers are subjected to while in Mexico, and how those conditions make it more difficult for them to access the few legal resources that may be available. Asylum seekers subject to Remain in Mexico must be able to present at ports of entry when they are scheduled for immigration court hearings, which means they must wait in Mexico’s northern border region for months.

While in Mexico, asylum seekers—an increasingly large proportion of which are mothers, children, and families⁷—often must stay in shelters or temporary camps set up by local nonprofit organizations with limited resources. These camps have been unable to keep up with the demand for housing and basic services, and the conditions in the camps are deteriorating.⁸ When space is full at shelters and camps, asylum seekers are forced to find alternative housing, even though they may not speak Spanish and often do not have any local family or other ties. Many end up sleeping on the streets. In addition, asylum seekers stuck in the Mexico may not have regular access to food or clean water.

Those waiting in Mexico frequently experience violence. In fact, the Dilley Pro Bono Project, a collaboration run by AILA and other organizations, found that 90.3 percent of the 500 respondents they surveyed in January and February 2019 said they did not feel safe in Mexico, and 46 percent reported that they or their child had experienced at least one type of harm while in Mexico.⁹

Without regular access to basic life necessities like food, water, shelter, and safety, asylum seekers often do not have the ability to seek out the few legal services that may be available. They may not have cell phones or regular access to landlines to call organizations to request representation, much less the money to make international calls to organizations in the United States. They are particularly vulnerable to notaries and other bad actors in the area who prey on these exact vulnerabilities. Additionally, the trauma suffered by these families and the on-going dangers they face in Mexico would make it even more difficult for survivors to relay their stories clearly and concisely to a legal services provider in a consultation, much less an asylum officer or judge.

⁵ Id.

⁶ Patrick McDonnell, *Pastor’s kidnapping underscores threat to migrants returned to Mexican border towns*, LA Times (September 2, 2019), available at <https://www.latimes.com/world-nation/story/2019-09-01/kidnapping-of-pastor-in-mexican-border-town-dramatizes-threats-to-migrants>; Department of State, Mexico Travel Advisory (April 9, 2019), available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁷ See Migration Policy Institute, *Eight Key U.S. Immigration Policy Issues*, Doris Meissner and Julia Gelatt, May 2019, available at <https://www.migrationpolicy.org/research/eight-key-us-immigration-policy-issues>.

⁸ See Patrick Timmons, *Squalid migrant shantytowns forms in Mexican border city*, May 14, 2019, available at https://www.upi.com/Top_News/World-News/2019/05/14/Squalid-migrant-shantytown-forms-in-Mexican-border-city/5501557701209/.

⁹ AILA and Advocates Send Letter Urging Secretary Nielsen to End the Migrant Protection Protocols Policy, AILA Doc. No. 19020631 (February 6, 2019), available at <https://www.aila.org/advocacy-media/aila-correspondence/2019/aila-and-advocates-send-letter-urging-secretary>. See also Human Rights First, *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process* (August 2019), available at <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>.

By contrast, if asylum seekers could wait in the United States while their claims are reviewed, they would live in comparatively safe and sanitary detention conditions and have better access to legal and social services. Additionally, non-profit organizations would be able to provide legal orientation programs and some limited legal representation free of charge.

FEW LEGAL SERVICES PROVIDERS ARE ABLE TO REPRESENT ASYLUM SEEKERS IN MEXICO

Even if an asylum seeker has the resources to seek legal representation, legal services providers are scarce and cannot possibly meet the need presented by the thousands of people subject to Remain in Mexico.¹⁰ According to DHS, asylum seekers subject to the policy are “provided with a list of legal services providers in the area which offer services at little or no expense to the migrant.”¹¹ This is the same list given to respondents who are located in the United States and consists solely of organizations based on the U.S. side of the border near the immigration court where their hearings will take place.¹² The list is not tailored for asylum seekers marooned in Mexico and contains organizations that are not able to travel to Mexico and conduct consultations or provide legal representation. It is also incredibly difficult for attorneys to represent asylum seekers subject to Remain in Mexico involved with representing someone outside of the country. Frequent travel to Mexico for U.S.-based attorneys is often not possible or unsustainable due to the exorbitant travel costs and disruption to their representation of other clients in the United States. The result is that most attorneys simply cannot represent asylum seekers subject to Remain in Mexico.

REMAIN IN MEXICO IMPEDES COMMUNICATIONS BETWEEN ASYLUM SEEKERS AND THEIR ATTORNEYS

If an asylum seeker subject to Remain in Mexico is able to find an attorney in the United States who can represent them, the mere fact that the migrant is located in Mexico with so few resources means that the effectiveness of that representation could be compromised. Competent and ethical representation of an asylum seeker is an involved and lengthy process that requires constant communication between the client and the attorney. The Model Code of Professional Responsibility requires that attorneys reasonably communicate with and zealously represent their clients.¹³

AILA’s Asylum and Refugee Committee estimated that representing an asylum seeker in immigration court takes between 40–80 hours of work, with an estimated 35 hours of face-to-face communication with the client.¹⁴ By marooning asylum seekers in Mexico, Remain in Mexico makes it significantly more difficult for attorneys to communicate with their clients: Face-to-face meetings are expensive and thus either rare or impossible; video conferencing is rare, as is the internet speeds needed to support it; a client may not have regular access to a phone, and if they are able to find one, do not have space where they can have a confidential conversation; and international phone calls are expensive and phone coverage can be spotty.¹⁵

¹⁰Over 55,000 people have been subject to the Remain in Mexico policy. Maria Verza, *Migrants thrust by US officials into the arms of the cartels*, Washington Post (November 16, 2019), available at https://www.washingtonpost.com/world/the-americas/migrants-thrust-by-us-officials-into-the-arms-of-the-cartels/2019/11/16/92003c6e-08ba-11ea-ae28-7d1898012861_story.html.

¹¹Department of Homeland Security, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

¹²See EOIR, *List of Pro Bono Legal Services Providers*, available at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>.

¹³Rule 1.4, Communications (2018), In American Bar Association, Center for Professional Responsibility, Model Rules of Professional Conduct, available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/; Preamble (2018), American Bar Association, Center for Professional Responsibility, Model Rules of Professional Conduct, available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

¹⁴These averages are the result of a survey completed between March 11, 2019 to March 15, 2019 of the members of the AILA Asylum and Refugee Committee, who, collectively, have represented thousands of asylum seekers. See *AILA Sends Letter to DHS Acting Secretary Detailing MPP’s Barriers to Counsel*, AILA Doc. No. 19060336 (June 3, 2019), available at <https://www.aila.org/infonet/aila-sends-letter-to-dhs-acting-secretary-mpp>.

¹⁵See Patrick Timmons, *Squalid migrant shantytowns forms in Mexican border city*, May 14, 2019, available at https://www.upi.com/Top_News/World-News/2019/05/14/Squalid-migrant-shantytown-forms-in-Mexican-border-city/5501557701209/.

One of the most critical aspects of representing an individual in asylum proceedings is being able to build trust between the client and the attorney. Most asylum seekers have experienced severe trauma and suffer from some form of psychological distress, making face-to-face communication essential for building trust. This type of relationship is necessary for clients to feel comfortable disclosing sensitive information and traumatic details to the attorney. Such specific, detailed information is required for asylum officers and judges to find an individual credible and ultimately grant relief. Again, frequent travel to Mexico for U.S.-based attorneys is unsustainable, which means the ability of attorneys to build trust will be compromised. Given these circumstances, U.S. attorneys may refuse to take on cases subject to Remain in Mexico out of legitimate concerns about being able to fulfill their ethical duties of competence.

Without the opportunity to travel to Mexico and consult with their clients, attorneys are typically required to wait until moments before a scheduled immigration court hearing to meet them face-to-face for the first time. Clients often speak languages other than English, and additional time and resources are required for interpretation services. Given these factors, it is extremely difficult for asylum seekers to relay their story in a full and comprehensible fashion, especially in initial meetings. Waiting until hours—in many circumstances, minutes—before a scheduled immigration court hearing to have direct contact with the client is not enough time for an attorney to build the type of trust discussed above and elicit the necessary details. Additionally, there are practical obstacles to building a case in the moments before court—attorneys and clients may not have access to a private room where they can discuss the case confidentially, or even the ability to use a computer and printer to ensure any last-minute information is included in court filings.

In addition to above-mentioned hurdles to counsel, migrants subject to Remain in Mexico at the tent courts have even greater hurdles to accessing legal counsel. For example, in the few cases where a migrant is able to find representation, AILA has found that some attorneys of record have not been able to meet with their clients for more than 30 minutes on the day of the hearing, despite the fact that clients are required to show up at the ports of entry hours prior to the hearing.¹⁶

DENIAL OF OBSERVER AND LEGAL ORIENTATION ACCESS TO SECRETIVE TENT COURTS

DHS had stated that it will allow public access to the tent courts, subject to some restrictions such as requiring requests for access to be submitted 5 days in advance. In September 2019, for example, then-Acting Department of Homeland Security Secretary Kevin McAleenan tweeted that the public and media would have access to the facility. However, as detailed in an October 7, 2019 letter sent by AILA and several other organizations, DHS has consistently denied access to attorney observers and non-governmental organizations (NGO's).

DHS has restricted access to the port courts to clients and their attorneys of record that have a representation agreement on file. At one time, even support staff for attorneys of record (i.e. interpreters and paralegals) were restricted from entering the tent court hearings.¹⁷ As a result, DHS is preventing nonprofit organizations from interviewing migrants for potential pro bono services, and even preventing nonprofits from providing basic legal orientation programs to migrants. Similarly, DHS has refused tent court access to attorney observers from non-governmental organizations (NGO's) seeking to tour the facilities and observe hearings from inside the tent facilities. As far as we are aware, only 1 NGO has been allowed inside the tent facilities for a tour before the courts were functioning.

During the week of September 16, representatives from AILA, the National Immigrant Justice Center, Women's Refugee Commission, and Amnesty International attempted to observe proceedings inside the facilities and were denied entrance by ICE officers and/or contractors. Some officers indicated that the denial of access was due to orders from ICE headquarters, and others indicated that CBP was responsible. Following the September visit, AILA sent a letter to DHS, ICE, CBP, DOJ, and EOIR requesting information about the tent courts and access to the tent court, to which DHS has not responded.¹⁸

¹⁶ Camilo Montoya-Galvez, "Farce of due process": Lawyers denounce new border tent courts for migrants, CBS News (September 19, 2019), available at <https://www.cbsnews.com/news/asylum-seeker-tent-courts-at-border-denounced-by-attorneys-as-farce-of-due-process/>.

¹⁷ Laura Lynch and Leidy Perez-Davis, *Searching for Fairness and Transparency—A First-hand Look at the Port Courts in Laredo and Brownsville*, Think Immigration (September 16, 2019), <https://thinkimmigration.org/blog/2019/09/16/due-process-disaster-in-the-making-a-firsthand-look-at-the-port-courts-in-laredo-and-brownsville/>.

¹⁸ AILA Sends Letter Requesting Information and Access to Port Courts, AILA Doc. No. 19092600 (September 26, 2019), available at <https://www.aila.org/port-courts-letter>.

Prior to AILA representatives traveling to Brownsville last week, AILA once again contacted CBP and ICE to request access to the tent facilities. ICE indicated that CBP controlled all access to the tent courts, and that they did not have a contact at CBP that could help AILA request access. Despite several phone calls and emails to CBP over a 14-day period leading up to the delegation's trip, AILA only received a reply from CBP the day before AILA representatives were scheduled to visit the tent facilities. CBP denied access to AILA and stated that the "facility is not available for in-person public access at this time."¹⁹

Observing Remain in Mexico hearings from the court locations where the judges are sitting is not an adequate substitute for being allowed to access the tent facilities holding the migrants. Observation from a courtroom that is hundreds of miles away from the actual location of the proceedings will not provide meaningful comprehension of how proceedings are operating from the migrant's point of view. Furthermore, remote observers will not be able to bear witness to any rights violations that may occur when the video teleconference system is malfunctioning or shut off.

INACCURATE AND INCOMPLETE NOTICES TO APPEAR IN REMAIN IN MEXICO CASES

Notices to Appear (NTAs) issued by DHS in Remain in Mexico cases have contained inaccurate information, including incorrect hearing locations and inaccurate addresses for migrants. One NTA even listed "Facebook" as the respondent's address.²⁰ Additionally, some NTAs are incomplete and fail to specify whether the respondent is being charged as an "arriving alien," an "alien present in the United States who has not been admitted or paroled," or an alien "admitted to the United States" who is removable. These charges on the NTA are vital to the proceedings because they impact the legal recourses available to the migrant. Despite these serious problems, DHS still pushes for immigration judges to order individuals subject to Remain in Mexico removed in absentia. Immigration judges have also said that DOJ has instructed them to order those who do not appear at their hearing to be removed in absentia.²¹

DOCUMENTS FALSELY INDICATING A FUTURE HEARING DATE

CBP has sent people who have been granted asylum back to Mexico with documents that falsely indicate that they have an upcoming court hearing.²² The Mexican government has stated that it will not accept people whose cases have been decided and who do not have a future hearing date. This has also happened to migrants who had their cases terminated—meaning a judge closed the case without making a formal decision, usually on procedural grounds. In addition to the safety and due process problems that these fake hearing dates pose, they also pose logistical hurdles, including questions around how and when the migrants will return to the United States.

DHS SHOULD IMMEDIATELY END REMAIN IN MEXICO AND THE USE OF TENT COURTS

Given the deeply troubling nature of the Remain in Mexico policy and its implementation, as well as the potential life-or-death consequences for the migrants, AILA urges DHS to end the Remain in Mexico program and the use of tent courts.

REPORT FROM AMERICAN FRIENDS SERVICE COMMITTEE

BETWEEN WALLS: ASYLUM SEEKERS UNDER THE MIGRANT PROTECTION PROTOCOLS

Full original report available in Spanish at afsc.org/saveasylum

¹⁹ AILA Sends Letter to Congress Demanding Public Access to Tent Courts, AILA Doc. No. 19111233 (November 12, 2019), available at <https://www.aila.org/advo-media/aila-correspondence/2019/aila-sends-letter-to-congress-demanding-public>.

²⁰ Adolfo Flores, *Border Patrol Agents Are Writing "Facebook" As A Street Address For Asylum-Seekers Forced To Wait In Mexico*, BuzzFeed News (September 26, 2019), available at <https://www.buzzfeednews.com/article/adolfoflores/asylum-notice-border-appear-facebook-mexico>.

²¹ Gaby Del Valle, *Trump's Remain in Mexico Policy Is Causing Asylum-Seekers to Miss Court Dates—and Get Deported*, Vice News (September 24, 2019), available at <https://www.vice.com/en-us/article/gvzdp9/trumps-remain-in-mexico-policy-is-causing-asylum-seekers-to-miss-court-dates-and-get-deported>.

²² Gustavo Solis, *CBP agents wrote fake court dates on paperwork to send migrants back to Mexico, records show*, The San Diego Union-Tribune (November 7, 2019), available at <https://www.sandiegouniontribune.com/news/immigration/story/2019-11-07/cbp-fraud>.

Executive Summary

Migrants traveling through Mexico intending to seek asylum in the United States are being forced to wait out the duration of their asylum process in Mexico under the Migrant Protection Protocols (MPP) established by the United States Government.

Because of a lack of transparency, the exact numbers of asylum petitioners returned to Mexico is unknown. Nevertheless, several sources have suggested that between January and August 2019, the number of asylum seekers made to remain in Mexico ranged anywhere between 31,000 to 35,000. In the case of Baja, California, it is estimated that up until October the number of petitioners who were returned reached 13,000.

Returning people who are requesting asylum under the MPP program to Mexico creates a tremendous challenge for civil organizations at the U.S.-Mexico border and Government authorities. Poor shelter conditions and lack of economic support previously provided by past Government through migrant funds are key causes of the challenges faced.

The returnee population under MPP finds themselves bewildered, desperate, and uncertain over what the future holds. Additionally, they live with fear of what could happen to them in Mexican territory because they have been victims of organized crimes and law enforcement. Some migrants have been robbed, extorted, kidnapped, and sexually assaulted during their journey and stay in Mexico. Their fear is justified.

Migrants have no safety net or support. Their lack of familiarity with the cities they are being returned to in Mexico and the inability to guarantee employment that will allow them to satisfy necessities like shelter and food leaves them incredibly vulnerable. They are also unaware of the asylum process and have access to little or no legal advice allowing them to continue the process.

As a result, the Coalition of Immigrant Defense, with the support of American Friends Service Committee, regional Latin America and Caribbean office (AFSC LAC) in collaboration with the National Commission of Human Rights, have taken initiative to develop a report that documents the experiences of the population returned under MPP from the United States through Baja California, characterized through profiles, conditions, necessities, and expectations. This report also seeks results in the proposal of care and protection options for the population that has migrated to the northern border states of Mexico.

A survey was applied to a sample of 360 applicants returned under the Migrant Protection Protocols (MPP) in 15 shelters in Tijuana and Mexicali, during the period from July to August 2019. This survey was supported with semi-structured interviews of key respondents.

The results show that the returnee population is made up of a slight majority of women, but there are also families. Five out of 10 people surveyed are between 19 and 35 years old. Seven out of 10 have completed only the most basic levels of study (primary and secondary). An important fact is that 7 out of 10 did have some form of employment in their country, but they fled because of insecurity and low wages. It should be noted that a significant number of people come from rural areas. At least half left their country because of the violence and dangers they were facing, but there were also applicants who fled for political reasons and domestic violence.

More than 90 percent have never applied for asylum in the United States and 80 percent are unaware of the legal procedures and lack the legal representation that allows them to prepare their cases. The majority also do not consider seeking legal advice because they cannot afford it. Only 15 percent are aware of the need for legal advice and plan to use those services.

Eight out of 10 respondents who had been held in detention centers in the United States talked about the lack of respect for human dignity in these facilities. For 80 percent of returnees, the food was insufficient and of poor quality, and 7 out of 10 cited overpopulation.

Nine out of 10 returnees were granted credible fear interviews by the U.S. Government, but 12 percent of people surveyed were not interviewed. More than 80 percent of people surveyed stated that their only interaction with U.S. agents was signing documents, which were usually not in Spanish.

Returnees are in a situation of extreme vulnerability; they don't know anyone, nor do they have personal contacts that provide humanitarian support. A significant percentage of the people surveyed consider that the Mexican population discriminates against them, so they are worried about staying in places where they do not have personal contacts or social networks.

Many applicants returned under these protocols have given up on the process and decided to return to their countries of origin despite the risks this represents. But this was due in large part to the lack of legal representation, uncertainty, and fear

of having to stay in Mexico for an undefined amount of time. Approximately half will have to wait for 1 to 3 months, and 40 percent will have to wait for 3 to 6 months.

Irregularities that violate due process are also committed in the return process. A third of the returnees who were in the detention centers were not notified that they would be returned to Mexican territory. Many applicants were not returned through the same city where the proceedings began and a quarter suffered family separation, violating international treaties.

In the process of returning to Mexico, the monitoring of returnees is irregular, and their personal security is not guaranteed. The Mexican authorities must respect and protect those who apply for asylum, as they committed to in agreements with the United States, but the practices show otherwise. Two-thirds of people surveyed were not approached by the Mexican authorities to interview them. Half of the returnee applicants had information about the existence of shelters in the cities where they were returned, but more than 90 percent had to go on their own because the authorities did not provide adequate support or guidance.

The expectations of these people are uncertain. Sixty percent say they will wait as long as necessary to carry out their process, while the remaining 40 percent say they will only wait a few months.

As for what will happen if they fail to gain access to asylum, half of the people surveyed do not have an action plan, a third will ask for refuge in Mexico, and 20 percent will be obliged to return to their country of origin.

STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

NOVEMBER 19, 2019

The American Immigration Council (“Council”) is a non-profit organization that has worked to increase public understanding of immigration law and policy—and the role of immigration in American society—for over 30 years. We write to thank the subcommittee for scheduling this hearing to discuss the so-called Migrant Protection Protocols (“MPP”) and their impact on asylum seekers and on the rule of law in the United States.

Since MPP was first announced, the Council has sought to draw attention to this dangerous and unlawful program. We have documented the risks that asylum-seeking families face in Mexico. We have visited the border to talk to people who have been sent back to Mexico, observed MPP court hearings in El Paso and Harlingen, and participated in briefings on MPP. Today, we write to highlight our experience with the problems that MPP has created both for asylum seekers and for the system of humanitarian protections that has existed in the United States for decades.

We also write to elevate the voices of people who have been subject to MPP, through the stories of Lucia, Camila, and Rosalia,¹ mothers currently detained in the South Texas Family Residential Center (“STFRC”) in Dilley, Texas. We hope that our experience with these issues may provide the subcommittee with additional insight and context to inform this debate.

MPP HAS PLACED TENS OF THOUSANDS OF VULNERABLE PEOPLE AT SIGNIFICANT RISK OF HARM IN MEXICO

When MPP was first announced on December 20, 2018, the Council immediately had serious concerns about the prospect of requiring vulnerable families to wait in Mexico. In response to the announcement, through our partnership in the Dilley Pro Bono Project, we undertook a study of 500 asylum-seeking mothers who were then detained at the STFRC. We asked the mothers whether they had been afraid for their lives in Mexico and whether they or their family had faced harm in Mexico during the journey to the United States. Our study showed conclusively that Mexico was not a safe place for asylum-seeking families to wait months at the border:

- 90.3 percent of respondents said that they did not feel safe in Mexico.
- 46 percent of respondents reported that they or their child experienced at least one type of harm while in Mexico.
- 38.1 percent of respondents stated that Mexican police mistreated them.

Nearly 30 percent of mothers reported that they had been robbed in Mexico on their way to the United States, while 17 percent reported that a member of their family had been physically harmed while traveling to the border. Widespread cor-

¹Given the sensitivity of the issues discussed, we have given these mothers pseudonyms. Their stories were collected through the Council’s presence at Dilley through the Dilley Pro Bono Project.

ruption among Mexican law enforcement officers also amplified fears held by the mothers, as 28 percent expressed that a Mexican official had demanded a bribe, and 9.5 percent reported that a Mexican official had threatened them with physical harm at some point during the journey to the border.

The Council, along with the American Immigration Lawyers Association (AILA) and the Catholic Legal Immigration Network (CLINIC), sent a letter to then-DHS Secretary Kirstjen Nielsen, detailing the results of our study and urging her to abandon the plans to expand MPP.² Unfortunately, Secretary Nielsen did not heed our warning.

One woman profiled in the letter, Concepción,³ reported that she was kidnapped and raped by a cartel member, who threatened to kill her 5-year-old child and sell his organs if she reported him to the police. Two women, Aracely and Fatima, were kidnapped by Mexican police officers and then sold to members of a cartel, who held them for ransom in a stash house where they observed gang members torturing other migrants. Another woman, Carolina, was extorted by men wearing Mexican Federal police uniforms, who entered the house she was staying in and demanded money. She observed them sexually assaulting another woman who could not pay.

Since we sent our letter in February, other organizations have documented the harms that occur to people subject to MPP. A study of 607 asylum seekers in Tijuana and Mexicali who had been sent back to Mexico found that 23.1 percent of asylum seekers, and 21.9 percent of asylum-seeking families, had “been threatened with physical violence while in Mexico as they await[ed] their immigration court dates.”⁴

Similarly, the organization Human Rights First documented more than 340 instances of rape, kidnapping, extortion, and assault against people in MPP through September 2019.⁵

The stories of mothers currently detained at the STFRC highlight the continued harms that people sent back under MPP face. These extraordinary stories demonstrate the extreme harm that women and children face after being sent back under MPP, and how USCIS’s fear screening process is patently inadequate.

LUCIA’S STORY: THE HORRIFIC CONSEQUENCES OF MPP—VIOLATIONS OF CBP POLICY AND INADEQUATE FEAR SCREENINGS LEAD TO A NIGHTMARE FOR A MOTHER AND HER DAUGHTER

Lucia is a mother from Ecuador who first sought asylum at the Nogales, Arizona port of entry in July, 2019 along with her 9-year-old daughter, who is deaf and mute. When she attempted to request asylum, Customs and Border Protection (CBP) officers physically prevented her from entering, grabbing her and her daughter and dragging them away from the port of entry. A kind stranger bought her a bus ticket to Mexicali, where they again sought asylum. This time, she was permitted to enter and begin the asylum process.

After 3 days in CBP custody, Lucia and her daughter were returned to Mexicali to wait for an MPP hearing on August 23, 2019 in Tijuana. This occurred even though Lucia’s daughter is deaf and mute and should have been exempt from MPP as a vulnerable individual in “special circumstances.”

After Lucia and her daughter were returned to Mexico, they briefly found a shelter in which to stay but were forced to leave when the shelter demanded payment, which Lucia could not pay. A man, “Chino,” offered to let her and her daughter live with his family and do domestic work for pay. However, when Lucia and her daughter went to his house, they learned he lived alone. He locked them in the house and left a huge dog outside the door. Chino forced Lucia to do all of his housework and did not pay her. He kissed Lucia’s daughter and inappropriately touched her sexually. Chino only let Lucia attend her court hearing on August 23 after Lucia asked a friend for help through the window. This friend begged Chino to let Lucia go. Chino threatened to kill Lucia and her daughter if she did not return after the court hearing.

²Letter to The Honorable Kirstjen M. Nielsen, Secretary, Department of Homeland Security, Substantial Evidence Demonstrating Catastrophic Harms That Will Befall Migrants in Mexico with Continued Implementation and Further Expansion of Migrant Protection Protocols, Feb. 6, 2019, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation_letter_urges_sec_nielsen_end_migrant_protection_protocols_policy.pdf.

³These names are also pseudonyms.

⁴U.S. Immigration Policy Center, UC San Diego, *Seeking Asylum: Part 2* (Oct. 29, 2019), <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>, at 4.

⁵Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy*, Oct. 1, 2019, <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>, at 2.

Terrified for her life, at the court hearing on August 23, Lucia begged to be taken out of MPP to protect herself and her daughter. But despite having been kidnapped and sexually assaulted in Mexico, Lucia did not pass USCIS's fear interview and was sent back to Mexico a second time to await a new court hearing.

As before, Lucia and her daughter were sent back under MPP even though they should have been exempt from MPP because Lucia's daughter is deaf and mute. In direct violation of the MPP guiding principles, CBP officers sent them back to Mexico anyway. This time, the consequences were even more severe. Just a few blocks from the port of entry in Tijuana, men with knives stopped Lucia and her daughter and abducted them.

Lucia describes the horrors that followed:

"The men drove us in a car overnight. They took us to a place that I believe was Hermosillo, Mexico and kept us there for 13 days. They didn't give us food or water. They tied my daughter up in a sheet so she could not move. They beat us repeatedly. They took off all of our clothes, touched us sexually, raped us, and masturbated in front of us. They often would not let us go to the bathroom. When they did let us, they would grab us and walk us to the bathroom and we would have to go in front of them. The men told me that I did not have rights because I am Ecuadorian, called me a dog and trash, and said they would light me on fire."

During the time Lucia and her daughter were subjected to this horrific ordeal, her kidnappers extorted thousands of dollars from family members in the United States under threat of her death. When her family managed to pay, the kidnappers drove Lucia and her daughter to the border. They took Lucia's daughter into their hands and dragged her over the border wall. They then demanded that Lucia cross as well or the men would abandon her daughter in the desert. Lucia climbed over the wall but injured herself doing so.

Immigration officials eventually found Lucia and her daughter and took them to the STFRC after she begged that they not be taken back to Mexico. At the STFRC, she learned she had been given a deportation order because she missed her second court date while she was kidnapped. She is currently seeking to reopen her case. The experience has utterly traumatized her daughter:

"My daughter's emotional state has completely changed since these terrifying experiences. She stays in our room and cries. She does not want to go to school. She thinks that everyone is going to abuse her. She is very afraid to return to Ecuador or Mexico."

CAMILA'S STORY: HOMELESSNESS, VULNERABILITY, AND AN ATTEMPTED KIDNAPPING LEAD TO A FAMILY MISSING COURT

Camila is a mother from El Salvador who, along with her 14-year-old son, fled death threats in her home country to seek asylum in the United States. In July 2019, Camila and her son sought asylum after crossing the Rio Grande river into El Paso, TX. Camila was sent back to Ciudad Juárez along with her son and told to wait 3 months for a hearing on October 7.

After being sent back to Ciudad Juárez, Camila and her son faced homelessness. She describes the dangerous instability they faced over the next 3 months as they waited for their court hearings:

"My son and I were very afraid in Ciudad Juárez and had nowhere to go. We slept outside of gas stations or in the bus station. I never slept well because of how dangerous it was. I told my son to sleep and would stay awake watching. After a week, we met a woman who said we could come to her house at night to sleep. We had to be in the street during the day. Three times, we were robbed of the little money we had. We were dependent on people giving us food or very small amounts of money for working at a taco stand or cleaning a house. We often went hungry."

On October 7, Camila and her son called a cab to take them to the port of entry, where they were required to arrive far before dawn. After a long time driving in the dark, Camila became afraid. As it got closer to dawn, Camila realized they were nowhere near the port of entry. When she asked the driver what was going on, he told her "not to ask questions or yell or else he would hurt [Camila] or [her] son." After driving for a long time, the taxi driver parked outside of a house and ran off. Camila and her son immediately took the opportunity to flee. After walking for a long time, they found themselves near the border and encountered Mexican police officers. Camila describes what happened next.

"I found Mexican police officers in the street and told them what had happened to me. The police laughed and told me that I was an immigrant, so if I wanted to cross

the border, why didn't I just go do that. They did not write down my report or offer to investigate my case."

Camila and her son eventually made their way to the port of entry later in the day on October 7, where she was told that she had missed her court date and had been ordered removed in absentia.

Camila and her son were then taken into CBP custody, where they were held for a staggering 18 days in total. She states that "we were treated worse than animals" and that she was frequently separated from her son. Only on the last 3 days in custody was she allowed to be in the same cell as her son. In late October, they were transferred to the STFRC to be deported. Camila is currently seeking to reopen her case.

ROSALIA'S STORY: LANGUAGE PROBLEMS, VULNERABILITY, HUNGER, AND HOW TRANSPORTATION PROBLEMS AND CBP'S REQUIREMENT TO ARRIVE AT COURT AT 3:30 AM LED TO A FAMILY MISSING COURT

Rosalia is a mother from Guatemala who, along with her 2-year-old daughter, fled her country to seek asylum in the United States. Rosalia's first language is Mam, and she does not speak Spanish fluently. In June, 2019 Rosalia and her daughter arrived at the Calexico port of entry, where they requested asylum.

After 2 days in CBP custody, Rosalia and her daughter were sent back to Mexicali with a notice to appear for court in Tijuana on October 7, telling her she needed to arrive at 3:30 AM. Although they had arrived at the port of entry with a suitcase full of clothing, CBP officers confiscated the suitcase, leaving them without any spare clothing or the rest of their belongings.⁶

For days after Rosalia and her daughter were released, they were barely able to obtain food to eat and experienced near-starvation, to the point that Rosalia was afraid her daughter would die. She describes the agonizing situation after being sent back under MPP:

"I had no money but I found a migrant shelter that allowed us to stay there for 3 nights for free. They then started to charge 35 pesos per night. A woman gave me 50 pesos, which I used for the shelter. I wanted to buy food but I was afraid that my daughter would be harmed if we slept in the street. My daughter barely ate for 3 days. Sometimes people would give us cookies, but I had nothing else to give her. She was sick and weak and cried a lot. Sometimes she fainted."
 "I was afraid that she would die. After 3 days, I was able to call my sister, who was planning on receiving me here in the United States. She sent me a little money for food."

For the next 4 months, Rosalia lived in the shelter in Mexicali, waiting for their October court date. She lived the entire time in fear of being kidnapped. Men followed her every time she left the shelter to get groceries and would ask her to go with them. Others in the shelter told her those men would force her into prostitution if she went with them.

On the day before her hearing, Rosalia and her daughter went to the bus station in Mexicali to take a bus to Tijuana. Because the first bus was full, she had to wait for a second bus. Unfortunately, this meant she arrived at the Tijuana port of entry at 4 o'clock AM, not 3:30 AM.

Because Rosalia and her daughter arrived half an hour late, the CBP officers told her it was too late for her to go to court. A CBP officer told her that he would contact the judge to reschedule a court date and told her to come back on October 10. When she returned 3 days later, the CBP officers told her there was nothing they could do and told her to go away.

Desperate, afraid, and unsure what to do, Rosalia and her daughter crossed between ports of entry a week later. They turned themselves in to Border Patrol officers and asked for asylum again. She was eventually transferred to SFTRC, where she received a reasonable fear interview. She is currently waiting for an immigration judge to review the decision she received.

⁶The Office of Inspector General has documented similar practices of CBP disposing of people's belongings at the El Paso Del Norte Processing Center, see Dep't of Homeland Security, Office of Inspector General, *Management Alert—DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (Redacted)*, May 30, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>, at 6.

MPP DOES DAMAGE TO THE RULE OF LAW AND MUST BE ENDED

As the stories of Lucia, Camila, and Rosalia show, MPP actively prevents asylum seekers from having their day in court, exposes families and children to homelessness and hunger, and puts them at grave risk of harm.

Lucia's story demonstrates the most extreme problems with MPP. CBP repeatedly violated its procedures by sending her and her daughter back under MPP, given her daughter's clear medical problems. CBP violated this "guiding principle" of MPP both when it sent her back the first time and when it sent her back after her first court hearing. In addition given that Lucia and her daughter were sent back to Mexico after they had already been kidnapped and sexually assaulted there certainly calls into question the adequacy of the fear screening. The fact that Lucia was then ordered removed for missing a hearing that she could not attend because she had been kidnapped a second time demonstrates the way that MPP interferes with people's opportunities to have a day in court.

Camila's story demonstrates the ways in which people in MPP are often forced into homelessness for months at a time as they seek asylum. It also shows how the dangers in Mexico, including kidnappings, prevent people from attending their court hearings, which often leads to an order of removal in absentia. Further, it demonstrates how Mexican police have often failed to provide protection for vulnerable asylum seekers.

Rosalia's story demonstrates the ways that MPP strips people of opportunities and puts them at risk even when they are not the victims of violence. Although Rosalia was not the target of physical harm in Mexico, she did not have food for several days, causing her daughter to faint repeatedly. She also missed her 3:30 AM court hearing, despite efforts to appear on time.

America has always provided refuge for those seeking to flee persecution. But with MPP, our Government has abandoned the basic principles of humanitarian protection that are enshrined in our laws and damaged the ideals of due process that underly our system of justice. As these stories show, even people who are desperately trying to follow all of the Government's rules find themselves unable to do so because of the dangerous conditions resulting from MPP.

In light of the foregoing facts, we urge the subcommittee to take steps to end this dangerous and ill-advised program. We thank you for the opportunity to submit this statement, and for the subcommittee's efforts to engage in a thoughtful conversation.

STATEMENT OF AMNESTY INTERNATIONAL

November 18, 2019.

Rep. KATHLEEN RICE,
Chair, House Homeland Security Committee, Subcommittee on Border Security, Facilitation, and Operations.

Rep. CLAY HIGGINS,
Ranking Member, House Homeland Security Committee, Subcommittee on Border Security, Facilitation, and Operations.

RE: Amnesty International Statement for Hearing on "Examining the Human Rights and Legal Implications of DHS's 'Remain in Mexico' Policy"

On behalf of Amnesty International USA and our members and supporters in the United States, we hereby submit this statement for the record. Amnesty International is an international human rights organization with national and regional offices in more than 70 countries, including in the United States. A top priority of our organization is the human right to seek asylum at the Mexico/U.S. border.

Amnesty International is alarmed by the human rights violations inherent in the misleadingly named "Migrant Protection Protocols" (MPP), informally known as "Remain in Mexico." Since January, nearly 60,000 people have been forcibly returned to Mexico under the program.¹ The program has made a mockery of the right to seek asylum as enshrined in domestic and international law, forcibly returned tens of thousands of individuals to potential grave danger, and operated with a dangerous lack of transparency.

In this statement, we wish to share some of our gravest and most immediate concerns about the policy. We thank the subcommittee for holding this important hear-

¹Molly O'Toole, "Asylum Officers Revolt Against Trump Policies They Say Are Immoral and Illegal," *L.A. TIMES*, Nov. 15, 2019, <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>.

ing and hope it is the first of several oversight efforts by Congress of this dangerous and unlawful program.

MPP VIOLATES THE RIGHT TO SEEK ASYLUM

The concept of territorial asylum—the ability of people seeking refuge at U.S. borders to request protection here—is a bedrock principle of international and domestic law. Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the latter of which the United States has signed and incorporated into domestic law through the 1980 Refugee Act,² governments must not forcibly return individuals to a place where they would fear persecution—not just their countries of origin, but any other place where a person would face risk of serious harm.³ To ensure this obligation is met, the U.S. Government has codified in domestic law the right to seek asylum both at and between ports of entry along the U.S. border.⁴

Historically, people seeking asylum at the border were given the opportunity to articulate a “credible fear” of return to their home countries; if they established such a fear, they were placed into removal proceedings and allowed to apply for asylum and related protections from within the United States, based on their fear of return to their countries of origin.⁵

MPP has upended this process by instead forcibly returning people, including asylum seekers, to dangerous and precarious situations in Mexico for the duration of their asylum proceedings, which can last several months, if not years. Only after these individuals win relief are they allowed to enter United States—and even after they win relief, the Government frequently sends them back to Mexico, reportedly by falsifying court documents.⁶

MPP appears designed to discourage individuals from seeking asylum by making it as difficult as possible to do so.⁷ Not only are asylum seekers exposed to grave harm as they await their proceedings in Mexico (as described in greater detail below), but they are also effectively cut off from legal services essential to securing relief.

In one study, asylum seekers who appeared with attorneys were found to be 5 times as likely to obtain relief as those who represented themselves.⁸ Yet, because MPP maroons asylum seekers far from legal service providers, only between 1–2 percent of returnees are represented by counsel.⁹ Because of restrictions on who may access new, secretive tent courts built at ports of entry, people subject to MPP are not able to access basic legal orientations and thus lack even minimal information about their proceedings. These hurdles make asylum all but impossible to access.

MPP RETURNS PEOPLE SEEKING SAFETY TO HARM’S WAY

By returning vulnerable individuals to some of the most dangerous places along the Mexico/U.S. border, MPP has directly resulted in grievous harms—including kidnappings, sexual assaults, extortion attempts, and other violent attacks—against people seeking protection. As of October 1, 343 individuals subjected to MPP had reportedly faced violent attacks or threats in Mexico, including on their way to their court dates in the United States.¹⁰ Service providers working with MPP returnees

² See text of 1980 Refugee Act, available at <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>.

³ Amnesty International, “Halt the ‘Remain in Mexico’ Plan,” April 15, 2019, <https://www.amnesty.org/en/documents/amr51/0172/2019/en/>.

⁴ 8 U.S.C. § 1158.

⁵ 8 U.S.C. § 1182.

⁶ Gustavo Solis, “U.S. border agents wrote fake court dates on paperwork to send migrants back to Mexico,” Nov. 7, 2019, *L.A. TIMES*, <https://www.latimes.com/world-nation/story/2019-11-07/u-s-border-agents-wrote-fake-court-dates-on-paperwork-to-send-migrants-back-to-mexico>.

⁷ Jason Kao and Denise Lu, “How Trump’s Asylum Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico,” *N.Y. TIMES*, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html>.

⁸ Asylum Representation Rates Have Fallen Among Rising Denial Rates,” TRAC Immigration, available at <https://trac.syr.edu/immigration/reports/491/> (last accessed Nov. 18, 2019).

⁹ See “Details on MPP (Remain in Mexico) Deportation Proceedings,” available at <https://trac.syr.edu/phptools/immigration/mpp/> (last accessed Nov. 18, 2019).

¹⁰ Human Rights First, “Orders From Above: Massive Human Rights Abuses Under Trump Administration’s Return to Mexico Policy,” Oct. 1, 2019, available at <https://www.humanrightsfirst.org/resource/orders-above-massive-human-rights-abuses-under-trump-administration-return-mexico-policy>.

have reported that anywhere from “half”¹¹ to “over 70 percent”¹² of individuals they’ve worked with have described facing serious harm in Mexico. These include:

- A female asylum seeker from Honduras: “[The Federal police] asked me what nationality I was, I told them I was from Honduras then they say: ‘Come with me.’ They grab my head, bend me over, and take me out of the house and put me in a black car. They covered my eyes with gray tape.” She was kidnapped by the police for ransom and raped multiple times. She stated that although her eyes were covered with tape, she managed to see because her tears soaked through the glue.¹³
- A male asylum seeker from El Salvador traveling with his baby daughter: “I was kidnapped in Mexico while waiting to come to court. We were headed to court over here. But we got stopped. They pulled us down. Mexican patrol cars were there, I thought they would help us. But they kidnapped us for 3 days. They let me go because of my family, because I didn’t have any money, but I don’t know what happened to the other men.”¹⁴

These stories of harm are so commonplace that one attorney who works with returnees in Matamoros commented to Amnesty International that “for people returned under the program, it’s not a question of if they’ll get kidnapped—it’s a question of when.”¹⁵ The Mexican State of Tamaulipas, which abuts south Texas, carries a “Level 4—Do Not Travel” warning from the U.S. Department of State because of risks of kidnapping and other violent crime by cartels.¹⁶ The forcible return of tens of thousands vulnerable migrants and asylum seekers to this area has constituted a veritable stimulus package for cartels operating in this region, which routinely kidnap returnees and extort their families for ransom, in some cases preventing them from being able to appear in court.¹⁷ Yet, despite these documented harms, immigration judges have publicly stated that they are pressured to issue in absentia removal orders in every instance in which an MPP returnee does not appear.

Even those returnees who have faced grave harm are typically unable to escape from MPP once they are placed in the program. Though the Department of Homeland Security (DHS) has instituted a fear-of-return-to-Mexico screening as part of MPP, called a “non-refoulement interview,” in practice, these screenings are a sham. First, they are available only to those individuals who affirmatively manifest a fear of harm in Mexico, violating a threshold principle of non-refoulement that all individuals must be screened for fear of harm in a given place before being forcibly sent there. Furthermore, the threshold is exceedingly high—higher than the showing required to win asylum on the merits.¹⁸ Asylum officers have spoken openly about how they are pressured to issue negative determinations, even when they believe returnees will be subject to grave harm in Mexico.¹⁹ Returnees have described how these interviews are cursory, in some cases lasting no more than 10 minutes.²⁰ Even those few returnees who have lawyers are generally unable to bring those attorneys to these interviews.²¹ Returning asylum seekers to any country without an adequate screening process is a flagrant violation of the U.S. obligation against refoulement.

¹¹ Mireya Villareal, “An Inside Look at Trump’s ‘Remain in Mexico’ Policy,” CBS NEWS, Oct. 8, 2019, <https://www.cbsnews.com/news/remain-in-mexico-donald-trump-immigration-policy-nuevo-laredo-mexico-streets-danger-migrants-2019-10-08/>.

¹² Conversation with legal services provider in Laredo, Texas (Sept. 16, 2019).

¹³ “Secuestraron Federales a Migrante Hondureña [Honduran Migrant Kidnapped by Federal Police],” *El Diario*, June 18, 2019, <https://www.eldiariodechihuahua.mx/estado/secuestraron-federales-a-migrante-hondurena-20190618-1528964.html>.

¹⁴ Remote observation of court proceedings in San Antonio, Texas (from the Laredo, Texas port of entry) (Sept. 17, 2019).

¹⁵ Conversation with legal services provider in Brownsville, Texas (Oct. 23, 2019).

¹⁶ “Mexico Travel Advisory,” U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (last accessed Nov. 18, 2019).

¹⁷ Emily Green, “Trump’s Asylum Policies Sent Him Back to Mexico. He was Kidnapped Five Hours Later,” VICE NEWS, Sept. 16, 2019, https://www.vice.com/en_us/article/pa7kkg/trumps-asylum-policies-sent-him-back-to-mexico-he-was-kidnapped-five-hours-later-by-a-cartel.

¹⁸ Dep’t of Homeland Security, “Migrant Protection Protocols,” Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

¹⁹ Molly O’Toole, “Asylum Officers Revolt Against Trump Policies They Say Are Immoral and Illegal,” L.A. TIMES, Nov. 15, 2019, <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>.

²⁰ Conversation with legal services provider in Harlingen, Texas (Sept. 20, 2019).

²¹ ACLU of San Diego & Imperial Counties, “Class-Action Lawsuit Demands Access to Legal Representation for Detained Migrants Who Have Expressed a Fear of Being Returned to Mexico,” Nov. 5, 2019, <https://www.aclusandiego.org/aclu-asylum-seekers-subject-to-trumps-remain-in-mexico-policy-must-be-given-access-to-counsel/>. On Nov. 14, 2019, a district court issued a temporary restraining order requiring a Guatemalan family the ability to consult with counsel in preparation for and during their non-refoulement interview. A hearing on whether that hold-

Furthermore, returnees subject to MPP routinely face homelessness due to the lack of available shelter space and difficulty accessing work, which further exposes them to risks of violent crime. Returnees have reported having their identity documentation confiscated by Customs and Border Protection (CBP) agents prior to return²² and are not provided any identity documentation demonstrating their lawful status in Mexico, potentially exposing them to potential detention and deportation there. Without access to work or steady shelter, many are relegated to living in precarious conditions, often in squalor, in border shelters packed to the brim²³ and in open-air tent camps.²⁴

Finally, even individuals whose vulnerabilities should exempt them from MPP are nevertheless placed in the program—including individuals with disabilities,²⁵ pregnant and nursing women,²⁶ and Indigenous language speakers.²⁷ LGBTI+ identifying individuals are also placed in the program, despite the well-documented risks of harm they face in Mexico.²⁸

MPP Operates with a Chilling Lack of Transparency

A new and alarming expansion of MPP occurred in September, when the U.S. Government opened secretive tent courts at the ports of entry in Laredo and Brownsville, Texas, where proceedings take place entirely via videoconference. DHS announced in August it would raid \$155 million of disaster relief funding to build these courts.²⁹

The tent courts are due process black holes in DHS's complete control: Not a single public observer has been permitted to access the tent courts to view proceedings taking place there, even though immigration courts are generally required to be open to the public.³⁰ Amnesty International has consistently requested access to the courts, including multiple times in person in Laredo and Brownsville in September and October. In September, an Amnesty International delegation was told variously that the tent courts were a “zero access area, by order of the President of the United States,” that attendees would need to be “vetted” by CBP in order to access the courts, and that the organization would be able to access the facilities for a tour “in upcoming weeks.” In October, Amnesty’s formal request for access went unanswered for weeks, until the organization was eventually told that observation of proceedings would not be allowed, but that at some future date, rights groups would be offered a tour. Two months since the courts have opened, and despite repeated requests, neither Amnesty International nor other rights groups have been granted access to the courts.

This lack of transparency is chilling, especially considering that individuals appearing at the tent courts are being sent to some of the most dangerous areas along the Mexico/U.S. border and are likely to be in particular need of immediate assistance. The closed-off nature of these courts also means that asylum seekers are cut

ing will be expanded to all MPP returnees will take place in December. See ACLU of San Diego & Imperial Counties, “Family Subjected to MPP Will Not Be Returned to Mexico to Pursue Their Asylum Claim,” Nov. 14, 2019, <https://www.aclusandiego.org/family-subjected-to-mpp-will-not-be-returned-to-mexico-to-pursue-their-asylum-claim/>.

²² Julia Love & Kristina Cooke, “Asylum seekers say U.S. officials returned them to Mexico but kept their IDs,” REUTERS, May 31, 2019, <https://www.reuters.com/article/us-usa-immigration-returns/asylum-seekers-say-u-s-officials-returned-them-to-mexico-but-kept-their-ids-idUSKCN1T115L>.

²³ Rebecca Plevin, “Mexicali Residents Protest Shelter for Asylum-Seekers Returned to Mexico Under U.S. Policy,” USA Today, Oct. 15, 2019, <https://www.usatoday.com/story/news/world/2019/10/15/mexicali-protest-shelter-asylum-seekers-us-policy/3983901002/>.

²⁴ Nomaan Merchant, “Tents, Stench, Smoke: Health Risks Are Gripping Migrant Camp,” ASSOCIATED PRESS, Nov. 14, 2019, <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.

²⁵ Human Rights Watch, “Mexico: Risks at Border for Those with Disabilities,” Oct. 2019, <https://www.hrw.org/news/2019/10/29/mexico-risks-border-those-disabilities>.

²⁶ Rochelle Garza, “Trump’s War on Asylum-Seekers is Endangering Pregnant Women,” Oct. 3, 2019, <https://www.aclu.org/blog/immigrants-rights/trumps-war-asylum-seekers-endangering-pregnant-women>.

²⁷ Gustavo Solis, “Trump Administration Appears to Violate Law, Pushes Thousands to Mexico to Await Asylum Cases,” L.A. TIMES, Aug. 28, 2019, <https://www.latimes.com/politics/story/2019-08-28/trump-administration-pushes-thousands-to-mexico-to-await-asylum-cases>.

²⁸ Julian Castro Helps LGBTQ Migrants Subject to Trump’s Remain in Mexico Policy,” Oct. 7, 2019, L.A. TIMES, <https://www.latimes.com/politics/story/2019-10-07/julian-castro-helps-lgbtq-migrants-trump-remain-in-mexico-plan-cross-border>; Amnesty International, “No Safe Place,” Nov. 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/11/No-Safe-Place-Briefing-ENG-1.pdf>.

²⁹ Amnesty International USA, “Trump Administration Uses Disaster Relief Funding to Fund a Disaster of Its Own Making,” Aug. 27, 2019, <https://www.amnestyusa.org/press-releases/trump-administration-uses-disaster-relief-to-fund-a-disaster-of-its-own-making/>.

³⁰ 8 C.F.R. § 1003.27.

off from any kind of legal orientation or assistance, as only attorneys who have entered appearances in individual cases are permitted in the tent courts.

The tent courts exacerbate and compound existing problems with MPP: Returnees appearing in tent courts face even more barriers to the full and fair hearings to which they're entitled under law, particularly given that judges are appearing via videoconference, sometimes from hundreds of miles away. They are designed to keep asylum seekers away from vital legal help and MPP proceedings out of the public eye. Unless Congress moves to act, these secretive courts could represent the future of asylum adjudication in the United States.

RECOMMENDATIONS

Given the serious human rights violations occurring as a result of MPP's continued operation, Amnesty International respectfully requests that Congress:

- *Defund MPP in the fiscal year 2020 appropriations cycle.*—Congress must halt MPP in its tracks by ensuring that no Federal funds are used to implement this unlawful program. Amnesty International urges Congress to retain Section 534 of H.R. 3931, the DHS Appropriations Act of 2020, which defunds unlawful asylum programs, including MPP. Congress must also demand a full accounting of the \$155 million of disaster relief funding it unlawfully reprogrammed toward the building of tent courts along ports of entry and must ensure that no more such courts are built.
- *Urge DHS and DOJ to allow public access to secretive tent courts.*—While MPP continues to operate, Congress must ensure that the administration abide by its own obligations to ensure that immigration proceedings are generally kept open to the public. DHS must be held to account for its deliberate failure to allow members of the public, including legal observers, to access tent courts and observe proceedings taking place there.
- *Undertake Congressional delegations to areas where MPP is actively in operation.*—Amnesty International urges Members of Congress to witness first-hand the human rights violations taking place as a result of MPP, including proceedings taking place in the secretive tent courts in south Texas and living conditions in the tent camp in Matamoros and border shelters along the Mexico/U.S. border.

For more information, please contact Charanya Krishnaswami, Americas Advocacy Director[.]

Sincerely,

CHARANYA KRISHNASWAMI,
Americas Advocacy Director, Amnesty International USA.

STATEMENT OF CHEASTY ANDERSON, M.A., PH.D., SENIOR POLICY ASSOCIATE,
CHILDREN'S DEFENSE FUND—TEXAS

Nov 18, 2019

For 20 years, Children's Defense Fund has worked to level the playing field for all children in Texas who cannot vote, lobby, or speak for themselves. We champion policies and programs that lift children out of poverty, protect them from abuse and neglect, and ensure their access to health care, quality education, and a moral and spiritual foundation. We thank the subcommittee for the chance to submit a statement on the Migrant Protection Protocols (MPP) policy.

We believe that the policies this administration has implemented are illegal. They also deliberately exposing children and their families to danger, and are actively causing additional trauma to people already deeply traumatized. CDF-TX strongly believes that this is not a policy that Congress should endorse, or even passively allow. We urge this subcommittee to push for the immediate end to MPP, and to demand that DHS return to admitting asylum seekers to the United States while their applications are processed, in keeping with centuries of historical practice.

MPP VIOLATES INTERNATIONAL AND U.S. LAW

The United States, as a global leader, is expected to follow international regulations regarding asylum seekers and refugees. As parties to the 1967 U.N. Protocol on Refugees, and the U.N. Convention Against Torture, the United States has a legal obligation to accept and process asylum applicants. It also has an obligation to do so under its own domestic law.

MPP violates the most basic right of non-refoulement. Though the justification for MPP rests on the idea that asylum seekers would be safe in Mexico, this is not the

case. Numerous reports detail the extreme vulnerability of those forced to remain in Mexico under MPP. Kidnappings, murder, lack of access to medical care, and unsafe housing are just the beginning of the numerous ways in which MPP forces asylum seekers into conditions which they are fleeing.

MPP also violates U.S. laws and regulations. Customs and Border Patrol is legally bound to provide special protections to groups recognized as vulnerable. However, by participating in MPP, CBP is knowingly sending children, pregnant women, sick people, and LGBTQ+ applicants back across the border, where they are vulnerable to violence and persecution. Additionally, USCIS is not following their obligations regarding due process. Ample evidence shows that applicants are being hurried through rushed procedures with judges seeing upwards of hundreds of cases per day. The number of negative decisions has skyrocketed, while the basic profile of applicants has not changed. In addition, USCIS has begun sending only positive (rather than negative) decisions on for further processing by supervisors, in the hope of overturning an applicant's positive credible fear interview decision. What's more, USCIS credible fear policies have been changed, making it much more difficult for an asylum seeker to pass their interviews. These policies are, by design, making it almost impossible for an asylum seeker to have an asylum claim accepted by the U.S. Government.

MPP EXACERBATES ASYLUM SEEKER TRAUMA

Numerous reports outline the trauma that MPP is creating. Asylum seekers are being subject to kidnappings, violence, and deplorable living conditions. MPP has created squalid camps on the Mexican side of the border without providing the rights that asylum seekers and refugees are legally entitled to. The people living in these camps have no access to potable water, no stable shelter, and little access to food. They are forced to wait months in order to have their first interaction with the U.S. legal system, and frequently then asked to wait months more for a second hearing with the court. Asylum seekers are not showing up to their appointments at the courts, not because they lack valid cases, but rather because they are forced to travel many miles to present themselves before dawn at the border in order to enter the United States. The administration creates unspeakable trauma by denying asylum seekers safety, and then also asking them to accomplish difficult feats with little to no resources. The Remain in Mexico policy is another step the administration is taking to dismantle the U.S.'s asylum system.

MPP UNDERMINES THE VALUES OF OUR NATION

This administration has been open about its intentions regarding immigration, writ large, and asylum policy, as a subset of that overarching goal to end immigration from poor countries. Stephen Miller, the architect of the Trump administration's immigration policy, has been transparent about his goal of ending legal immigration by any means possible. But rather than working through the Congress to enact policy changes in line with the administration's political goals, they have instead ruled by fiat, bullying, and intimidating when necessary, firing career leadership and replacing those leaders with political ideologues, and tightening restrictions to the point of impenetrability for those seeking asylum from danger and violence in their country of origin.

In doing so, they have caused children and their parents to suffer and to die. CDF-TX believes that the United States should be working to protect children and vulnerable populations, no matter where they come from. We urge the subcommittee to take the strongest possible action to shut down MPP (and the host of attendant policies) as soon as possible, and return us to a place of compassion and sanity in our treatment of those seeking safety and security within our borders.

Thank you for your time, and for looking into this matter.

STATEMENT OF THE CENTER FOR VICTIMS OF TORTURE

NOVEMBER 19, 2019

The Center for Victims of Torture (CVT) commends the House Homeland Security Subcommittee on Border Security, Facilitation, and Operations for holding an oversight hearing on the Trump administration's "Remain in Mexico" policy, the implementation of which has acted as a catalyst for the humanitarian crisis taking place

at the U.S. Southern Border. We appreciate the opportunity to submit this statement for the record.¹

Founded in 1985 as an independent non-governmental organization, the Center for Victims of Torture is the oldest and largest torture survivor rehabilitation center in the United States and 1 of the 2 largest in the world. Through programs operating in the United States, the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives of more than 25,000 primary and secondary survivors, including children. CVT also conducts research, training, and advocacy, with each of those programs rooted in CVT's healing services. The organization's policy advocacy leverages the expertise of 5 stakeholder groups: Survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts. The vast majority of CVT's clients in the United States are asylum seekers. Indeed, based on research studies the Department of Health and Human Services Office of Refugee Resettlement estimates that 44 percent of asylum seekers, asylees and refugees now living in the United States are torture survivors.²

THE "REMAIN IN MEXICO" POLICY EXACERBATES THE TRAUMA FACED BY FAMILIES
FLEEING PERSECUTION

A significant number of the Central American families who come to the United States are survivors of torture,³ and many more are fleeing persecution. Because of the nature of trauma, oftentimes children who accompany traumatized parents experience symptoms as secondary survivors (even if they have not been directly harmed previously). These highly traumatized populations are particularly vulnerable to harm and to becoming re-traumatized.

There are certain minimum requirements necessary for effective rehabilitation for torture survivors and survivors of similarly significant trauma, one of which is a felt-sense of safety.

Before the Trump administration took steps to end access to asylum in the United States, many asylum seekers would be able to stay with family and/or friends during the pendency of their immigration proceedings after passing a credible fear interview. This would allow them a modicum of stability and a chance at beginning the healing process. The Migration Protection Protocols ("MPP") achieve precisely the opposite, placing asylum seekers in further danger, which exacerbates their trauma.

According to a recent report from Human Rights First (HRF), "[a]s of November 19, 2019, there are at least 400 publicly-reported cases of rape, torture, kidnapping, and other violent assaults against asylum seekers and migrants forced to return to Mexico by the Trump administration under this illegal scheme."⁴ After visiting what has become a migrant camp in Matamoros, HRF observed:

"More than 1,000 children, families, and adults are sleeping on the streets in front of the Matamoros port of entry without adequate access to water or proper sanitation, too afraid to enter the city because of the extreme violence there. An American nurse, visiting as a volunteer, told Human Rights First researchers that many of the children were suffering from diarrhea and dehydration."⁵

Dr. Sondra Crosby, MD, a Physicians for Human Rights (PHR) medical expert and associate professor of medicine and public health at the Boston University School of Medicine and Public Health, made similar observations after visiting Matamoros.⁶

"As a medical professional, I am extremely alarmed by the unsafe, unsanitary, and inhumane conditions in the large and growing migrant encampment in Matamoros. This is a refugee camp in the making, mere steps from the United States—but one with no form of medical services, security, or reliable food and potable water supply for the more than 500 people living there."

¹For questions or for more information about CVT's work in this area and on related issues, please contact Andrea Carcamo, senior policy counsel at the Center for Victims of Torture at acarcamo@cvt.org.

²Office of Refugee Resettlement. Survivors of Torture Program. Retrieved from <https://www.acf.hhs.gov/orr/programs/survivors-of-torture>.

³Meyer and Pachico (Feb 1, 2018). Washington Office on Latin America. Fact Sheet: U.S. Immigration and Central American Asylum Seekers. Retrieved from <https://www.wola.org/analysis/fact-sheet-united-states-immigrationcentral-american-asylum-seekers/>.

⁴<https://www.humanrightsfirst.org/campaign/remain-mexico>.

⁵<https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

⁶<https://phr.org/news/phr-statement-on-migrant-protection-protocols/>.

“The conditions I witnessed at the Matamoros encampment include:

- Lack of access to medical care, including prenatal or obstetric care;
- Insufficient access to food and increasing risk of anemia and malnutrition;
- Inadequate access to clean, potable water, which places pregnant women especially at increased risk of dehydration, heat stroke, and diarrheal diseases;
- Insufficient infrastructure, such as latrines, to ensure basic sanitary conditions; and
- Overcrowded living conditions in the open air that increase the risk of infectious diseases (respiratory diseases, measles, rubella, tuberculosis, and diarrheal diseases).

“While there are supposed to be certain protections for groups that are in particularly vulnerable situations,” she continued, “what I saw at Matamoros shows that this is not the case . . . No human being should be subjected to these types of conditions.”⁷

FAMILY SEPARATION AS A RESULT OF MPP

Women’s Refugee Commission “has received and confirmed numerous reports of family separation through [Remain in Mexico]. This is especially concerning given the danger involved to those returned to Mexico, the difficulty in communicating or reunifying after such a separation, and the additional potential risk of trafficking this practice creates. The separation of families in this manner is a violation of due process and presents both logistical and safety issues.”⁸

This practice is cruel and will have long-lasting negative consequences for families’ health and well-being, especially children. As Susan Jasko MSW, LICSW, a CVT therapist with over 20 years of clinical experience working with children and families, has explained:

“When children are young, they are bonding with their parents, and good bonding leads to positive relationships with other people in adolescence and adulthood. Breaking that bond can have consequences in the child’s ability to socialize with others. When children come from an area where they experienced violence, it teaches them that the world is not safe. Then, when they are separated from their parent, this idea is solidified, which can have a profound effect on the development of the child. If a child lives in a state of trauma, as children fleeing conflict areas that are separated from their families do, it can affect their brain development at a biological level as well.”

Many of the children Ms. Jasko has treated over the years were struggling with separation from or loss of parents, and all presented severe symptoms, including nightmares, fears, anxiety and depression.

Ms. Jasko’s experience is far from unique. Indeed, over 20,000 medical and mental health professionals and researchers working in the United States have previously made clear—directly to the DHS—that “[t]he relationship of parents and children is the strongest social tie most people experience, and a threat to that tie is among the most traumatic events people can experience.”⁹ They further explained that separating a child from a parent causes an effect known as adverse childhood experience (ACE), which can lead to multiple forms of impairment and increased risk of serious mental health conditions including post-traumatic stress disorder (PTSD).

CONCLUSION AND RECOMMENDATIONS

MPP is fueling the crisis at our Southern Border, and is having a profound impact on the lives of some of the world’s most vulnerable people, torture survivors among them. The practice of returning asylum seekers to Mexico and separating families must be stopped, those responsible should be held accountable, victims deserve redress, and preventive mechanisms need to be adopted.

⁷ <https://phr.org/news/phr-statement-on-migrant-protection-protocols/>.

⁸ file:///C:/Users/Andre/Downloads/Chaos_confusion_and-danger-Remain-in-Mexico_1-.pdf. [sic]

⁹ Physicians for Human Rights (June 14, 2018). Letter to Secretary Nielsen and Attorney General Sessions. Retrieved from https://s3.amazonaws.com/PHR_other/Separation_Letter_FINAL.pdf.

STATEMENT OF COLUMBAN CENTER FOR ADVOCACY AND OUTREACH

NOVEMBER 19, 2019

As the national advocacy office representing the Missionary Society of St. Columban, the Columban Center for Advocacy and Outreach stands in solidarity with marginalized people whom Columban missionaries serve in 16 countries throughout the world. We appreciate the opportunity to submit a statement for today's hearing on the human rights and legal implications of the "Remain in Mexico" policy.

Since our founding as a Catholic missionary society over 100 years ago, we have welcomed the stranger in our communities. Through our ministries, Columbans have accompanied and defended the rights of migrants across the globe and in our communities and congregations here at home. In the United States specifically, we have accompanied and served migrants arriving at the U.S.-Mexico border for over 25 years.

Throughout the past year-and-a-half, communities of faith all along the U.S.-Mexico border have consistently mobilized to accompany the increase in children and families from Central America seeking safety in the United States. They welcomed them into shelters where they provided them with support, shelter, and responded to their trauma.

Columbans opened their arms and buildings in El Paso, TX to provide support and shelter to those children and families. Those shelters are now almost empty. We know, however, that this is not because people have stopped seeking safety in the United States. Instead, Columbans in Ciudad Juárez, Mexico are now mobilizing to provide humanitarian services to the dramatic increase in people being forced to wait in Mexico while their asylum claim is adjudicated.

As people of faith, we affirm the inherent dignity of every person and the ability to seek security and safety. It is not a crime to seek asylum. The "Remain in Mexico" policy operates in direct contradiction to these moral and legal standards. It not only endangers the lives of asylum seekers but also the credibility of our asylum system itself.

We see the detrimental impact of this policy on people seeking asylum through our daily ministry in Ciudad Juárez, MX. For these reasons, we stand opposed to the policy and believe it should be terminated immediately. While it continues to be implemented, however, we are called to respond to the immediate needs of the people subjected to this policy.

HUMAN RIGHTS IMPLICATIONS OF "REMAIN IN MEXICO"

When "Remain in Mexico" was expanded to include the El Paso sector in February 2019, the civil society community in Ciudad Juárez, MX were among the first to respond to the steady increase in people returned to Mexico. Columbans began working on the ground to respond to the immediate needs of people being returned. Our work includes efforts such as:

- Expanding access to safe shelter space
- Coordinating transportation to ensure people have a safe way to return to the ports of entry for their hearings
- Coordinating donations and resources for waiting asylum seekers
- Assisting asylum seekers in accessing Mexican work permits and limited health care
- Providing emotional and spiritual support as families navigate increasingly complex decisions.

Based on our experiences responding to the needs of asylum seekers subjected to "Remain in Mexico", we have identified a number of challenges faced by both humanitarian service providers and asylum seekers themselves in the Ciudad Juárez area:

- *Lack of safe and stable shelter space.*—Ex. There does not exist adequate shelter space in Ciudad Juárez to serve all people subjected to "Remain in Mexico." Not only is there not enough space but the official shelters that exist are not designed for long-term stays. With the wait times for asylum seekers under "Remain in Mexico" stretching into mid-2020, a lack of long-term shelter space presents multiple obstacles to safely remaining in Ciudad Juárez, especially for women and children, while awaiting their hearings.
- Barriers also exist to establishing safe, long-term shelters as the threats of violence against waiting asylum seekers create a chilling effect on accessing available buildings. Case example: Columbans are responding to the needs of traumatized women in "Remain in Mexico" by trying to expand access to safe, long-term, humane shelters where the women can create community and have

access to support systems. These efforts are becoming increasingly difficult, however, as they are unable to find landlords willing to rent their space to migrants due to fears of being targeted by traffickers and cartels.

- *Threats of violence.*—Ex. Lack of access to safe shelter space, the unknown nature of the program and wait times, and lack of community support all increase the vulnerability of asylum seekers under “Remain in Mexico.” Asylum seekers are considered “dollar signs” by traffickers and cartels waiting to exploit their vulnerability. Columbans provide support services to those who have been subjected to these types of violence, especially women and children.
- Not only do asylum seekers face the possibility of kidnapping, trafficking, and physical violence on the Mexican side, but they are subject to violence in CBP custody as well. Case example: Maria is a 15-year-old asylum seeker from Guatemala. She arrived in Ciudad Juárez with her brother and mother. When the family initially presented themselves to CBP officers and were processed into “Remain in Mexico,” Maria was subjected to physical abuse from a CBP officer that resulted in a hand-shaped bruise on her stomach. The family now await their next hearing date under “Remain in Mexico” in fear of interacting with CBP officers again.
- *Lack of access to due process.*—Ex. All official forms provided by CBP are in English. This creates an obstacle to claiming asylum as there are a lack of translation resources available for waiting asylum seekers. This means they are unable to both understand the forms and unable to adequately fill them out.

Forcing people to wait in Mexico while their asylum claims are adjudicated places them in incredibly dangerous and vulnerable situations—which can lead to people abandoning their rightful claim to asylum. Providing humanitarian services for people subjected to “Remain in Mexico” is incredibly challenging in the context of a lack of services and infrastructure available to serve such high numbers of people and the increasingly dangerous conditions in northern Mexico.

This change in asylum policy is not intended to process people more humanely and efficiently or offer them better “protection”. It is, instead, intended to increase the danger, wait time, and level of difficulty that must be overcome to access this life-saving protection.

The “Remain in Mexico” program should be terminated and instead, resources should be focused on strengthening our existing asylum system and Family-Based Case Management alternatives to detention. We ask that Congress ensure no funding is available for the Department of Homeland Security to implement this policy in the fiscal year 2020 Homeland Security appropriations bills.

If you have any questions about this statement, please contact Rebecca Eastwood, Advocacy Coordinator[.]

STATEMENT OF CHURCH WORLD SERVICE (CWS)

TUESDAY, NOVEMBER 19, 2019

As a 73-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 24 refugee resettlement offices across 17 States, Church World Service (CWS) urges the committee to affirm the legal right of all people to seek protection where they feel safe and to condemn the administration’s latest anti-asylum policies that are immoral, illegal, and cruel.

CWS urges Congress to defund the administration’s deadly Migrant Protection Protocol (MPP) policy, which violates U.S. and international legal and moral obligations.—In September 2019, the Trump administration’s policy of returning asylum seekers to Mexico was expanded, sending men, women, and children from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela, and other countries to wait in the notoriously dangerous state of Tamaulipas and opening secretive tent courts in Laredo and Brownsville, Texas, for MPP hearings. CBP officers have sent late-term pregnant women back to Mexico under the MPP policy, despite the fact that individuals with known health issues are supposed to be exempted from the program. In one case, doctors gave a woman who was already experiencing contractions medication to stop the contractions so that she could be sent back across the border to Mexico. This policy delivers nearly 50,000 children, their families, and other asylum seekers to areas so plagued by violence that the State Department has designated the state of Tamaulipas a Level 4 threat risk—the same warning as Afghanistan, Iraq, Syria, Somalia, North Korea, and Yemen. Some 26,000 are stranded in Mexico due to metering—the illegal policy of turning back asylum applicants at ports of entry.

The Trump administration continues to deter asylum seekers and immigrants and choke off access to the asylum system, including through family separation and child and family detention.—DHS detention is plagued with systemic abuse and inadequate access to medical care. Numerous reports have revealed the systemic human rights abuses, sexual assaults, and dehumanizing conditions that exist in the detention facilities. These exceedingly overcrowded detention centers are unsanitary, unhealthy, unsafe, and are leading to extreme, and sometimes fatal, mental and physical health outcomes for children. At least 7 Central American children died in U.S. custody between September 2018 and May 2019. Between fiscal year 2016 and fiscal year 2020, the administration nearly doubled immigration-related detention, from 30,539 beds in 2016 to 54,000 beds in 2020. CWS demands that Congress reject any proposal that would expand family, child, or immigrant detention—or violate the *Flores* agreement's long-standing consensus that children should not be detained for longer than 20 days.

CWS condemns the administration's dangerous asylum ban and urges Congress to protect individuals' legal right to seek asylum in the United States.—The administration announced an interim final rule that bans those who seek safety at the U.S. border from asylum protections if they travel through another country en route to the United States, known as the Third-Country Transit Bar that went into effect September 2019. This asylum ban is immoral, illegal, and cruel—and is diametrically opposed to our Nation's values of compassion and welcome. This policy requires asylum seekers to stay in the very same unsafe countries that many migrants are fleeing, banning virtually all asylum seekers entering the United States by the Southern Border, including those in MPP from receiving asylum. This bar applies to all non-Mexican asylum seekers, even those who are fleeing the most horrid circumstances and those in protected categories.

CWS is equally troubled by proposals that would weaken or eliminate provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA), which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution.—Weakening existing legal protections, especially for children, undermines the United States' moral authority as a leader in combating human trafficking and increases vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services.

As a faith-based organization, we urge Congress to hold the administration accountable to respecting the humanity and dignity of all immigrant families, asylum seekers, and unaccompanied children seeking protection.

STATEMENT OF FAMILIES BELONG TOGETHER

NOVEMBER 19, 2019

Chairwoman Rice, Ranking Member Higgins, and Members of the subcommittee, Families Belong Together respectfully requests that this statement made be part of the record for the November 19, 2019 hearing, "Examining the Human Rights and Legal Implications of DHS's 'Remain in Mexico' Policy."

Led by the National Domestic Workers Alliance (NDWA), Families Belong Together was formed in June 2018 in response to the Trump administration's zero tolerance immigration policy that cruelly separated migrant children and families who have arrived at the U.S.-Mexico border seeking asylum. The Families Belong Together coalition includes nearly 250 organizations representing Americans from all backgrounds across the country who have come together to end family separation and detention and to reunite all families who remain torn apart. We have mobilized hundreds of thousands of people across the country to take action to promote dignity, unity, and compassion for all children and families and to ensure that the *Flores* Agreement, a decades-old settlement that provides standards for detention and treatment of migrant children in immigration custody, is not gutted by the administration.

This year, Families Belong Together opened an office in Tijuana, Mexico to provide much-needed services to asylum seekers who are languishing in Tijuana as a result of such policies as "Remain in Mexico" (formerly known as "Migrant Protection Protocols") and metering. The critical services our Tijuana team provides include legal support, counseling, and delivery of material goods such as tents, clean drinking water, and mattresses.

"Remain in Mexico" policy exposes asylum seekers to the very harm and violence from which they are fleeing, violates due process and international legal obligations, and causes irreparable psychological harm to vulnerable children and families.

“REMAIN IN MEXICO” POLICY FORCIBLY SUBJECTS ASYLUM-SEEKERS TO THE SAME KIND
OF HARM AND VIOLENCE FROM WHICH THEY FLED

Since January 2019, over 55,000 people seeking asylum in the United States, of which 15,500 are children and 500 infants, have been forcibly returned to Mexico under “Remain in Mexico” policy.¹ In addition, some 26,000 are stranded in Mexico due to metering, an illegal policy that turns back asylum applicants at ports of entry.² These policies have forcibly subjected vulnerable children and families to the same kind of violence and other life-threatening conditions in Mexico from which they fled with extremely limited access to legal and humanitarian support. According to one estimate, nearly 400 people have faced kidnapping, extortion, sexual assault, and violent crimes as a result of “Remain in Mexico” policy.³ Many of the asylum seekers we serve in Tijuana have shared their own fears of persecution, violence, and extortion as they await their hearings in Mexico border cities. These border cities are so plagued by violence that the U.S. State Department has designated the state of Tamaulipas a Level 4 threat risk and warned that “[v]iolent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common. Gang activity, including gun battles and blockades, is widespread.”⁴

Another study found that between 21 percent and 24 percent of migrants in the Remain in Mexico program report receiving threats of violence while in Mexico, and of those, over 50 percent report that the threats turned into actual violence, including beatings, robbery, and extortion.⁵ According to a recent report by U.S. Immigration Policy Center, the length of time spent waiting in Mexico is statistically significantly related to being threatened with physical violence. At 88.6 days spent waiting in Mexico, which is the average length of time in between being processed by U.S. immigration officials (i.e., being returned to Mexico) and the immigration court dates of surveyed respondents, the predicted probability of being threatened with physical violence is 32.0 percent.⁶ During these prolonged wait periods, families are often homeless, unemployed, and do not have access to basic material goods, making them more susceptible to extortion and kidnapping.

In short, “Remain in Mexico” policy is punitive, punishing instead of protecting vulnerable and desperate children and families.

“REMAIN IN MEXICO” POLICY CAUSES IRREPARABLE TRAUMA TO ASYLUM SEEKERS

“Remain in Mexico” policy has caused irreparable harm and trauma to children and families as they wait in limbo for upwards of 2 years for their next court date. Every day our Tijuana team provides counseling to families who express a profound sense of hopelessness for their future and are deeply distressed that they will continue to live in dangerous and precarious conditions.

For instance, one family we have been counseling has been living in peril in Tijuana for more than 8 months, and they have only had 2 court hearings. This family had fled violence and extreme poverty in their home country and is experiencing trauma again and again as they face on-going poverty and violence in the face of extreme uncertainty that they will find safety and stability in their lives.

Many of the women we provide counseling to have escaped gender-based and sexual violence and are desperate for their lives as they seek protection in a safe haven.

One such case is of Laura, a young mother of 3 who fled violence in Honduras only to face similar conditions in Tijuana. Laura⁷ was stranded in the desert with her 3 children, including a young daughter who is only 8 years old. After walking for nearly 6 hours, they were picked up by Customs and Border Protection (CBP) officers. Laura and her children were taken into “La Hielera” or a detention center where she was detained in overcrowded facility for 9 days with no access to natural light, showers, or medical care. During this time CBP officers attempted to separate Laura from her 16-year-old son but he was able to remain with his mother due to a previous medical condition. After 9 long days, Laura and her children were flown to the San Ysidro port of entry and then returned to Tijuana, Mexico with no money or information as to next steps. Since then, Laura and her family live in unstable conditions at shelters not knowing what will come next. Concerns of a chickenpox

¹ “Assessment of the Migrant Protection Protocols (MPP)”, Dept of Homeland Security. 28 Oct. 2019. <https://bit.ly/2OebkaY>.

² “Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy” Human Rights First. 1 Oct. 2019. <https://bit.ly/2Ksn0ps>.

³ “Remain in Mexico” LAWG. 15 Nov. 2019. <https://bit.ly/2CNYHOR>.

⁴ “Deliver to Danger” Human Rights First. Aug. 2019. <https://bit.ly/2rQRiM4>.

⁵ Wong, Tom. “Seeking Asylum Part 2” US Immigration Policy Center. (2019) <https://bit.ly/2KtzKvV>.

⁶ Ibid.

⁷ * Name changed for privacy.

outbreak and unhygienic conditions at the shelter are a concern for the mother of 3. Laura's first hearing was in October 2019 and the next hearing date will not be until February 2020. Laura remains anxious for her children's safety in Tijuana and whether she will be forced to return to gang violence in Honduras.

Women and children remain vulnerable to sexual violence and harm while waiting for their cases in Mexico. We have met several women with small children who, after waiting nearly 6 months under the policy, have decided to voluntarily return to their home countries unsure of whether they will survive the violence and harm. The Remain in Mexico policy has caused irreparable trauma to thousands of children and families. Remain in Mexico is an inhumane and cruel policy and no family should live in the constant fear of being returned to persecution and violence.

"REMAIN IN MEXICO" POLICY IMPEDES ASYLUM SEEKERS' DUE PROCESS RIGHTS

The Remain in Mexico policy impedes asylum seekers' due process rights, including access to counsel by barring them from entering the country and thus making it virtually impossible for them to find a lawyer for their cases. Approximately 98 percent of the 47,313 asylum-seekers in the Remain in Mexico program were unrepresented as of September 2019.⁸ Our Tijuana team works with legal organizations to run legal clinics, where we help asylum seekers to fill out the I-589 asylum application form. However, this legal clinic is not a substitute for legal representation to navigate the complicated asylum process, and the demand for such assistance is overwhelming, where we are experiencing challenges to meet such demand every day.

The policy further impedes asylum seekers' access to due process as vulnerable children and families are forced to travel hundreds of miles, in extremely dangerous conditions, to attend their court hearings in the United States. Since March 2019, the Tijuana team has provided transportation for over 1,500 individuals to ports of entry for their hearings in the United States.

In one such case, an Indigenous family of 7 made an arduous, 6-hour-long, 250-mile journey from Mexicali to San Diego to attend their asylum hearing:

"An Indigenous family with 5 minor children requested asylum at the Calexico port of entry and were sent back to Mexicali. In order to attend their hearings at the San Diego court, the family bought 7 bus tickets and traveled 3 hours from Calexico to the city of Tijuana. For a 9 o'clock a.m. asylum hearing, the family woke up at 3 o'clock a.m. and arrived at the El Chaparral port of entry at 4 o'clock a.m. to enlist. Once they entered the United States they were transported to the court and remained there for almost the entire day. After their hearing, they returned to Tijuana in the late evening, a place not only unknown but extremely unsafe for them, especially during late hours. From there they took a midnight bus to their shelter in Mexicali. Despite the dangerous conditions, the parents and small children continue to make this perilous journey each time they have a hearing, which range between every 1 to 4 months."

The policy also impedes access to due process by sending asylum seekers to temporary tent facilities which serve as virtual immigration courtrooms for Remain in Mexico cases. This is a sham: The judges appear remotely via video from traditional courtrooms; and it is reported that the unreliable wifi makes communication and language interpretation between the judge and asylum seekers near impossible, which is a detriment for all affirmative asylum cases.

RECOMMENDATIONS

Remain in Mexico is a dangerous and unlawful policy which undermines domestic and international legal protections and forcibly subjects asylum seekers to life-threatening violence and trauma. We urge Congress to take the necessary steps to:

- Defund the Remain in Mexico policy and restore due process rights for asylum seekers.
- Allow the public access to tent court facilities until the Remain in Mexico policy is halted to ensure fairness and transparency for asylum seekers.
- Conduct oversight of and direct U.S. Customs and Border Protection (CBP) to restore timely and orderly asylum processing at ports of entry and ensure humane conditions for those held temporarily under CBP custody, meeting all

⁸ "Details on MPP (Remain in Mexico) Deportation Proceedings", TRAC IMMIGRATION (Sep. 2019), <https://trac.syr.edu/phptools/immigration/mpp/> ("Measure" as "Current Status;" check "Graph Time Scale" as "by Month and Year;" select "Hearing Location" on left-most drop-down menu; select "Represented" on center drop-down menu; check "Represented" on right-most drop-down menu).

legal standards, including the *Flores* Settlement Agreement and DHS internal detention policies.

We appreciate the opportunity to submit our statement to the subcommittee on this topic. If you have any questions regarding our statement please contact Haeyoung Yoon, Senior Immigration Policy Director[.]

STATEMENT OF LAURA BELOUS, ESQ., ADVOCACY ATTORNEY, FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT

The Florence Immigrant and Refugee Rights Project is a 501(c)(3) non-profit organization that provides free legal and social services to the nearly 6,600 immigrant men, women, and children detained in immigration custody in Arizona on any given day. As the only non-profit organization in Arizona providing free legal services to people in immigration detention, our vision is to ensure that every person facing removal proceedings has access to counsel, understands their rights under the law, and is treated fairly and humanely.

The Florence Project was founded in 1989 to provide free legal services in a remote immigration detention center in Florence, Arizona. We have expanded significantly since that time, and now provide free legal services to unaccompanied children facing removal proceedings in Arizona. The Florence Project represents children before the USCIS and EOIR on a wide variety of applications, including I-360 Special Immigrant Juvenile Status (SIJ) Petitions and I-485 Application for Adjustment of Status, among others.

The Florence Project is concerned that young people are not receiving full and fair hearings under the MPP program. As a result, some of our clients have been forced by necessity to leave their parents and enter the United States as unaccompanied minors. This is deeply traumatic to these children and parents and a very ineffective way to process these cases. Forcing a child to choose between staying with his parents and seeking safety is fundamentally unfair.

To illustrate the desperation that our clients experience, we share the following client story. Names and some identifying information have been changed in order to protect his privacy.

Juan and his mother came to the United States to flee gang violence in El Salvador. Gang members were actively trying to recruit 16-year-old Juan and threatened him multiple times. He refused to join or work for them. A few days later, they came to his house to look for him. Although he wasn't there, the gang members attacked his mother and left her bruised and with a bloody nose.

Juan and his mother fled to the United States. When they arrived at the border, agents told them that the laws had changed and they now had to wait in Mexico.

Juan and his mother filed for asylum and submitted the police report they made, as well as the hospital records showing that Juan's mother required treatment for the assault.

Juan and his mother were taken to Tijuana, then to Mexicali, and back to Tijuana to wait for their court hearings. They stayed in a migrant shelter that was so overcrowded it had to start turning people away. They went to court in San Diego 3 times. Juan estimates there were about 18 days between the first and second hearings, and about 3 weeks between the second and third.

Juan and his mother had their final hearing in October. The judge denied their claim.

Juan and his mother knew that there was no future for him in Tijuana. The shelter was overcrowded and his mother became increasingly desperate because she felt that there was no way to support her son there or for him to continue his education. Juan and his mother made the decision for Juan to come to the United States alone where they hoped that he could receive protection from the gangs threatening to kill him in El Salvador. He entered the United States as an unaccompanied child and left his mother in Mexico.

For the reasons stated above, the Florence Project strongly objects to MPP because it results in family separation, fundamentally unfair hearings, and unnecessary detention of children.

STATEMENT OF JODI GOODWIN, ESQ., LAW OFFICE OF JODI GOODWIN, HARLINGEN, TX

MONDAY, NOVEMBER 18, 2019

Chairwoman Rice, Ranking Member Higgins, and subcommittee Members, I am an immigration attorney in private practice in the Rio Grande Valley along the Texas border with Mexico. I have been an immigration lawyer here for more than

20 years. From this perspective, I am submitting reflections on what I have witnessed regarding the Remain in Mexico “Migrant Protection Protocols” in Brownsville and Harlingen, Texas, and Matamoros, Tamaulipas, Texas. These are my public Facebook posts that I have collected. Please excuse the informal nature of these writings. However, I feel it is necessary for the subcommittee to know as much about the actual reality of MPP as possible. This is an account of how MPP has unfolded in just one location among many. Thank you for the opportunity to be heard.

September 15, 2019

<https://www.facebook.com/photo.php?fbid=10217008037407814&set=a.1231099932310&type=3&theater>

Long post . . . please read. Especially if you are an immigration Judge or an ICE attorney.

Two days. 100 degrees. 100 percent humidity. And a beautiful rainbow to start our second day this weekend in Matamoros with Project MPP Matamoros. We saw about 80 plus principal applicants (that means we didn't count spouses and children so the real reach is much higher) to help them understand immigration court proceedings and asylum applications.

But not just that . . . today I met with 5 pregnant or just had their babies in the last week women. One thrown back into Mexico after CBP had taken her to hospital to stop her contractions, one so heavily pregnant she spent 7 days in the hielera only to be sent to Mexico to give birth less than 12 hours after CBP threw her back. Another 13 weeks along dehydrated, sick, living in inhumane conditions on the streets of Mexico that she fainted and then began vomiting. No one from the Mexican authorities came to assist. Myself and some other refugees grabbed some chairs to make a makeshift bed, had her drink rehydration salts and used peppermint oil to bring her back after the fainting spell. More electrolytes, water, and a granola bar I had in my bag. It took about 40 minutes until her pupils returned to normal. Luckily, a Cuban refugee with some EMT training was barking orders for us to try to find the various things he thought could help her all while checking her vitals super old school style with a watch to count her pulse and listening for her breaths as she laid on the makeshift bed. I guess street lawyering means you are also a nurse/EMT.

There are so many stories I can tell. MPP is wrong on a moral level. MPP is wrong legally.

Then there are all the court documents that have fake addresses where CBP puts in an address to a shelter that no one can get in. They are homeless. But the judges buy those fake addresses and use them to deport people. The “tear sheets” which are supposed to instruct refugees how to appear to court are either not given at all or given with wrong information telling them to appear at the bridge at the same time their hearing is supposed to start which ensures they will not make it to their hearing on time. Then there are those thrown back without even giving them their court documents. When they go to the bridge to ask about their paperwork they are told CBP doesn't handle that . . . when in fact it is CBP who does! How in the world are refugees supposed to know when and where to go to court when CBP won't even give them the court documents. And of course I cannot fail to mention all the defects in the court charging documents . . . it goes on and on.

We are better than this. The humanitarian crisis has not gone away. It is just south of the border and worse than ever. In 24 years as a lawyer I have never seen so much extreme cruelty. If you are a lawyer and have some time to work remotely on document preparation contact me. If you are a Spanish Speaking Immigration lawyer with asylum law experience, we could use you for 4 days of your life from Friday to Monday.

September 7, 2019

<https://www.facebook.com/jodi.goodwin.5/posts/10217021837512808>

My client was told to show up at the bridge at 4:30 am for a 12:30 pm hearing. Why? What does it take 8 hours to let a mom and her 2 children into the tent courts?

They took their shoelaces . . . again.

That waiting room for children they showed off in tours that was filled with colorful shelves of toys, books, and crayons . . . nah the 4 year old and 10 year old didn't get to play for the hours they waited.

No breakfast, no lunch. One bottle of water for each and some Sabritas.

Fake addresses on documents the government filed in court.

No simultaneous interpretation.

Can't talk to your client after court . . . CBP says it is not allowed but has nothing to show what the rules are.

The port o potties already stink . . . Lord knows what that place will smell like when they start running 3 full master dockets at a time next week. Gross.

And don't think of walking into the CBP office at the bridge to say you are there for court. No one knows where to tell you to go. Here's a little pro tip . . . skip the CBP office and just walk down the street to the second Sally port gate with razor wire . . . you just stand in front of it until someone comes. That is the lawyer entrance.

And this is for someone that has counsel . . .

MPP is a farce and mockery of the immigration court system, of justice, and so many stand by idly as if there is nothing to see, nothing wrong, nothing unjust. Errors and lies are just overlooked . . . meanwhile more people die.

History will write this story.

October 1, 2019

<https://www.facebook.com/jodi.goodwin.5/posts/10217127856283211>

Tales from MPP

Sleep deprivation is a form of torture and has serious effects on the cognitive ability to understand and process thoughts. It affects a human body's core biological functions.

MPP is torture. Waking at 2:30 am or not sleeping at all due to the dangers on the streets of a level 4 security threat zone and then being required to show up in the middle of the night to present yourself for court is torture. After you present at the border you are shuffled through processing, medical screenings, waiting areas, and finally taken to court where you are expected to understand everything.

But the court is not a real court. It is a giant screen. And no one interprets what is being said in that courtroom unless you are lucky enough to have a lawyer demand it. Otherwise only direct questions are interpreted to you. You are tired, sleepless, and cannot focus.

You leave the "court" and have no idea what just happened. And they make you wait and shuffle you from waiting areas for hours. You are forced (not "allowed" as one judge puts it) back to another country where you live on the streets. No sleep still.

Back in Mexico you have to get a permit to be there and they make you wait again for hours.

My clients were up for over 24 hours just to be at their hearings. They are all questioning what in the world happened at those hearings. For them, they are lucky I can explain. What about those, the overwhelming majority, without lawyers. Without the ability to ask questions and get answers from the judicial system supposedly hearing their claims? How can anyone be expected to fully comprehend what is happening in court?

Oh . . . and imagine that you are a child . . . MPP tortures you, too.

October 2, 2019

<https://www.facebook.com/jodi.goodwin.5/posts/10217135616237205>

Tales from MPP

It is 11:44 am. I have already been to Brownsville twice, Mexico once, and back to Harlingen again.

MPP affects the regular docket of the immigration courts, too. Judges are quick to reset cases because they have to finish their regular docket to be able to start the MPP docket on time. In my case, we could have resolved an issue if the court had one copy of a document for the government attorney (he wasn't prepared with enough copies). But making the copy and letting me review it so we could resolve the issue would have taken too many minutes I suppose. So we got pushed down the road for another 5 months for something that might have taken 10 minutes tops.

No worries . . . judge will be able to make his case completion goal for his performance review by ordering all those in MPP deported in their absence. Immigration "Courts" belong in the Department of INjustice.

I am not so sure that Immigration Judges are disinterested parties any longer . . . their job depends on numbers not the impartial imparting of justice.

October 9, 2019

[https://www.facebook.com/
photo.php?fbid=10217198533850106&set=a.1487242295709&type=3&theater](https://www.facebook.com/photo.php?fbid=10217198533850106&set=a.1487242295709&type=3&theater)

Tales from MPP

MPP has created the largest refugee crisis in the Western Hemisphere since the mass exodus of Cuba.

Let's just call a spade a spade. No spin, the photo below shows a portion of a refugee camp that houses about 1,000 people so far. It grows each day as 120 or so people arrive daily at the camp. There is NO international presence of NGO's to operate this refugee camp. In a matter of weeks it will swell to 1,500 and then 2,000. The growth outpaces the capacity of local humanitarian aid organizations and legal service providers.

Intentional infliction of human suffering is not good. Abiding by and saying or doing nothing because you are "following orders" makes you no different from the Nazi Doctor's who threw aside their Hypocratic Oath to "do no harm."

MPP is a Refugee Camp full of human suffering.

October 10, 2019

[https://www.facebook.com/
photo.php?fbid=10217206767695947&set=a.1487242295709&type=3&theater#](https://www.facebook.com/photo.php?fbid=10217206767695947&set=a.1487242295709&type=3&theater#)

Tales from MPP

MPP is human suffering on scales not seen the United States for decades. It is intentional aforethought by operatives within our government.

MPP is the Migrant Protection Protocol. Protection, you ask, from who?

Protection from brown babies. This picture taken by a Mexican journalist tells the entire MPP story in one image. The entire might and power of a government that is run by fear mongering racists against the tiny brown babies of the world.

But what you don't know is THAT is my brown baby. That is your brown baby. That is your neighbor's brown baby. That is the brown baby of the "good illegal" that cares for your kids, cuts your yard, cleans your home and cooks your meals.

We have a shared privileged responsibility to stand up, speak up, for the brown babies of the world.

MPP is straight up systematic institutional racism.

October 21, 2019

<https://www.facebook.com/jodi.goodwin.5/posts/10217312137050115>

Tales from MPP

It's almost 2 am and there is a tornado warning. Rain comes down sideways and the electricity just went off. I just woke up to the thunder.

Meanwhile, my homeless client with 2 children is expected to make her way to the bridge in about an hour to be processed to make it to court for 8:30 am. I hope she can get there. I hope she can find shelter out of the rain. I hope her children's clothes and shoes being wet in the frigid temperatures of the CBP holding tent won't get them sick. I hope her clothes will dry out before court. I hope she will be able to focus because I know she nor her children will have slept tonight.

She and the children have a place to go where there is a warm bed, a bathroom, and loving family. A safe place. In the US. Away from the dangers of street life in Matamoros.

How many people won't make it to court tomorrow morning? Is the weather an exceptional circumstance? Or will the judges just rack up points for their performance review quotas and order them all removed?

MPP is misguided and cruel.

October 21, 2019

<https://www.facebook.com/jodi.goodwin.5/posts/10217316085988836>

Tales from MPP

You won't believe the sham that is MPP court process. Seriously, I can't make this stuff up!

I am a lawyer so I know my way around the court, around CBP, around DHS and FPS . . . this is a sampling of one half of 1 day. Now imagine you are not a lawyer and do not speak the language of the court. Read on.

My clients do everything right, the legal way. They wait their turn to apply for asylum at the bridge . . . wait for months due to metering. They are sent back to Mexico to wait for court. They wait for months. They prepare their asylum applica-

tion and try to file it with the court only to be rejected over and over again because CBP has never filed the charges with the court.

Sitting in a tent in a refugee camp they were able to do their job. Why can't CBP? They lost the paperwork and need to redo it. I send the clients back to the bridge to redo it. CBP still doesn't file. My clients' asylum application is rejected again.

But wait, the papers they were given say there is court on the 1st of November, the court says the hearing is on the 6th. How will they be notified? Will the court send a carrier pigeon into the refugee camp with notice? I ask and the Court Administrator just shrugs her shoulders. IDK

Next . . . go to the tents. Five officers tell me my clients did not appear which I know to be false. I have to keep insisting. Court is about to start. They still don't even know my clients are in their custody. Just like family separation, CBP doesn't even know who they have. They are found but only after I insist. What about those that don't have a lawyer which is most . . . will CBP just lose them and not take them to court?

My client's son is squirming and crying. He just turned 4. He is starving having been in CBP custody since the wee hours of the morning and not being given anything to eat. I am incredulous to hear this. When will CBP learn they are required by law to provide milk, juice and snacks to children! No food was given to his mother or sister either. Sleepy, cold, and hungry . . . that is how they are expected to go to a court that determines life or death to them.

Then I find out that the entire 12:30 docket was reset to 8:30 in the morning . . . 4 hours earlier. How in the world would refugees in the refugee camp every know this? I suppose the same carrier pigeons from above would rush over I. The [sic] middle of the night to tell them to come to court early. Nah . . . no notice or anything, the court just goes ahead and orders those without telepathic capabilities removed because they got no notice their hearings would be 4 hours earlier.

Fundamental fairness requires that proceedings be translated. We already know the court has no ability to conduct simultaneous translation . . . but today the court would not even do consecutive translation opting instead to just summarize everything at the end of the hearing.

MPP is a sham at all levels.

October 30, 2019

<https://www.facebook.com/photo.php?fbid=10217392656463050&set=a.1231099932310&type=3&theater>

Tales from MPP

MPP brings amazing souls together for one goal: justice.

This is a pro bono asylum case for a family of four from Venezuela. Uncountable hours of work went into crossing into a Level 4 Security Threat assessment zone just to be able to get their story, their evidence, and prepare them for courts.

Even more uncountable hours by pro bono translators to assist in the multitude of documents that needed translation. Hundreds and hundreds of copies (we had to change the toner in the copier in the middle of it).

All this . . . so that there is a chance for justice and due process to prevail.

But do not fret dear Immigration Judge and ICE Trial Attorney, the index makes it all clear with succinct summaries and selected portions of the supporting documents detailed with countless hours put in by our law school intern, too.

So many people coming together to make justice happen . . . hope the judge is on our side.

MPP brings amazing souls together.

November 2, 2019

<https://www.facebook.com/photo.php?fbid=10217421993716463&set=a.1487242295709&type=3&theater>

Tales from MPP

MPP is unfair.

I have always wanted to write a legal brief where my argument was simply, this is unfair. I have never done it, but certainly thought about it many times.

Imagine this, you are an asylum seeker living on the streets in a Level 4 Security Threat Assessment zone. You cannot be sure when is the next time you will get food. You have no sanitary place to use the restroom. There are only a handful of extremely brave lawyers that are willing to cross into the dangerous place you live to help you with your asylum case.

When the lawyers go to Mexico hundreds of people line up to talk to them. The lawyers have to leave and go back to the United States when it gets dark because it is unsafe. You have tried each time to get a moment to speak to the lawyers, but with so many people you turn has not come up yet. You are trying your best to survive and to get legal help.

Now imagine this, you sleep comfortably, had a hot breakfast, went to your air conditioned office and began your day. You have court that day and instead of showing empathy for the situation of those appearing before you and the awful inhumane conditions in which they live in a make-shift refugee camp, you scold those that did not come before you with all their documents in order missing translations or simply not ready yet. You tell those appearing before you that you will deport them. Scold is the only word I can think of to translate what the refugees in Matamoros have told me has happened to them in court. They use the word *regañar*. It reminds me of being talked down to as a kindergartener. They leave court not exactly knowing what the judge wants from them, but desperately seeking help.

Dear Immigration Judge, please do not scold (*regañar*) those who are trying their best in some really awful conditions. Please understand that there are only two lawyers that regularly (weekly) cross to México to assist thousands. Please understand that the process of MPP makes it incredibly difficult to represent a person. We are trying to recruit other lawyers to take cases either for hire or pro bono, but it is hard . . . not everyone is willing to put their life in danger. Please understand that those before you are exhausted from a sleepless night and didn't get to have breakfast. Please understand that this is not traffic court, these are death penalty cases. You see the picture below, that is one lawyer, for hundreds.

But yet . . . when the government presents documents that are incorrectly filled out, contain falsities, or they don't bother to bring their file or be prepared with the correct documents, they don't get scolded (*regañado*). There is a double standard that is so tilted it is unfair.

How about delivering justice, fair and impartial justice? Is it too much to ask that everyone actually has a fair shake in court? Ya no los regaña.

MPP is unfair.

November 10, 2019

<https://www.facebook.com/jodi.goodwin.5/posts/10217487309029305>

Tales from MPP

MPP is state created danger.

When you ask for asylum in the US it means you seek protection not further harm. The treatment of individuals in MPP is intentional harm at the hands of various agencies of the US government including CBP, ICE and EOIR.

As I was answering legal questions and helping prepare people for their upcoming court dates, a visibly shaken and tortured woman approached. She was just released from her kidnappers of 8 days. She was returned to Mexico by CBP when she and her 4 years son asked for asylum in the US. Upon return, she waited for hours in Mexican immigration to be given a permit to remain in Mexico until her court date in the illegal tent courts. Within an hour of being released from Mexican immigration, and just outside of the immigration building on the plaza where the refugee camp is . . . she and her son were picked up by evil kidnappers.

The next 8 days are a blur of torture and awful treatment by organized crime in Mexico. Thousands of dollars later, she is released to relatives from the US that travel to Mexico to save her. Those same relatives that could have cared for her and her son in the US while waiting for court for their asylum claim.

This is just one story that unfolded before me today in Mexico. Perhaps later I will have the strength to write about the 7 year old girl kidnapped and raped in front of her parents. Kidnapped from the same plaza where the refugee camp is located. They, too, have a place to go to be safe in the US.

Much like the intentional emotional harm inflicted on parents and children that are separated by CBP, MPP causes purposeful harm. One court has already ordered the US government to make reparations for the harm caused by family separation.

MPP is state created danger.

November 18, 2019

<https://www.facebook.com/jodi.goodwin.5/posts/10217558216961959>

Tales from MPP

It has been a while. Things are shifting. The last week has been a roller coaster.

A sweet hoard of children group-hugging me . . . “usted es la abogada Jodi?” Si, yo soy!

A wholesale stonewall by CBP to process refugees for non-refoulement interviews, illegal of course.

A trial attorney that, again, has not done their job and showed up in court without background checks despite their duty to do so and the fact they can do these checks with the touch of a button. So a family stays in Mexico for yet another week despite the fact the judge intends to grant asylum to them.

A good judge quits. A judge that has a heart. A judge that is smart. A judge that was not a yes man. And will certainly be replaced by yet another judge with no experience in immigration law and only out to meet some BS quotas to make their boss happy and get a great performance review for completing cases. Well doesn't that just suck?

A sick baby is left on the bridge in frigid weather in an act of extreme cruelty by CBP despite being with a doctor and despite bringing CBP's own medical staff out in the cold to evaluate the baby on the bridge. All agreed she needed to be treated. Yet it was 3.5 hours in the cold and 1.5 hours processing them before we could rush the baby to the Emergency Room at the nearest hospital.

An encounter with a woman and her 4 year old son who were just released moments earlier after 8 days of being kidnapped. Shock, signs of torture, extreme fear, looking back across her shoulder. Scared to death I gave her options of either trying to cross immediately to ask for an NRI or go to the Mexican authorities. She went to talk to a family member waiting on the other side of the plaza to ask for their opinion, she disappeared. That boy . . . 4 tiny little years . . . that boy! I cry at night thinking of that boy.

Transcribing phone conversations of ransom negotiations between organized crime kidnappers and loving family in the U.S. Do I really do this? Our government is complicit in kidnapping . . . plain and simple. Those people were kidnapped just outside of the Mexican immigration building less than an hour after they were sent back under MPP.

So many in the refugee camp are set for trial now. It seems the government has some type of orders to reserve appeal on all cases no matter the strength of the claim. Reason and rule of law be damned.

A mom approaches me . . . she sent her 3 and 5 year old to the bridge by themselves. She hopes they will be released to their father. But hasn't heard from the children for 4 days . . . no one will tell her nor their father where the children are. Read that again . . . 3 and 5 year old!

A government submission so far slanted regarding the conditions in Venezuela that even the State Department Report refutes it. What kind of instructions are these TAs being given?

People need lawyers to represent them in their cases before the judges. There are so many that will simply be railroaded by complicit judges and TAs despite the fact that the claims are valid and strong.

A badass lawyer comes with me to tent court and to the Refugee Camp to see for himself, to try to understand and help us use technology to help many. I am so hopeful this technology will work.

Refugees themselves, local volunteers, and volunteers from afar all beg for me to do individual cases . . . to represent them. The need is so great and the hours in each day are so few.

My last thoughts as I leave the Refugee Camp . . . I don't feel well, I need to lay down. I need strength for another day . . . another week. And then the King of the Camp appears to give me one of his signature squeeze hugs. It hurts my abdomen.

STATEMENT OF MARSHA R. GRIFFIN, MD, BORDER PEDIATRICIAN, MEMBER OF THE AMERICAN ACADEMY OF PEDIATRICS' COUNCIL ON IMMIGRANT CHILD AND FAMILY HEALTH, BROWNSVILLE, TEXAS

Greetings from all of us on the border, physicians, attorneys, advocates, and friends, all of us fighting like you for basic human rights and dignity for asylum-seeking families and children.

Last summer, a fury of protests were lifted against the conditions within the Customs and Border Protection processing centers, commonly referred to as "Las Hieleras". The facilities were overcrowded and dirty, children separated from their parents and packed into chain-link cages. Families went days without a shower or change of clothes, even those who were forced to sleep outside in the parking lot of the facility, with no protection from the rain. The lights inside the processing centers were kept on 24 hours a day, and there was no way to tell day from night.

There were no clocks, and so no way to mark the time. Children did not sleep; parents worried, rightly, that they might have their children taken from them.

The detainees, men, women, and children, were fed the same meal: A cookie and an apple in the morning, a semi-defrosted bologna sandwiches on white bread at lunch, a half-frozen burrito in the evening. Mothers who were permitted to be with their newborns and infants did not have access to clean water to wash the babies' bottles.

These families were being held for far longer periods of time than permitted in the *Flores* Settlement Agreement. In many ways, it was worse than being jailed, for no phone calls were allowed, there was no access to attorneys, and there was no telling when they might get out.

For the first half of the year, medical care for the detained children and families and pregnant was deficient to the point that children died.

The Federal Government's response to these horrors was the creation of a program called "the Migrant Protection Protocols," otherwise known as "Remain in Mexico". Under this plan, families seeking asylum are processed into Customs and Border Protection custody, and then returned to Mexico where they are expected to stay until their asylum hearings.

In our area, beginning in mid-July (this past summer) between 100 and 250 moms and dads and their children were taken to Matamoros, Mexico, a city that the State Department considers as dangerous as Aleppo, Syria. Soon, over 1,500 people were living in small pup tents at the foot of the international bridge in Matamoros.

The Federal Government erected makeshift tent courts on Customs and Border Protection property. Daily, parents and their children are told to line up on the international bridge at 4am on the day of their first hearing. A judge, sitting far from site, entertains the case, and if the asylum seeker wishes to continue to pursue their case, are assigned a date for a follow-up hearing. They are then returned to Mexico, where they continue their wait in the tent cities, often for months into the future.

What do the children do in the mean time? They sit and sleep in the small, individual tents (churches have donated individual small tents for each family) jammed together at the foot of the bridge. This is no small group of people. Last night, for instance, there were more than 1,500 families at the bridge in Matamoros. Within each tent there are children huddled inside. These are tents designed for camping, meant to hold 2-3 people for a short time, not a family with 3 or 4 children who will be living in this tent for months on end.

In the Matamoros camp there are only 10 porta-potties for the 1,500 people. Unsurprisingly, camp residents find themselves forced to urinate and defecate in the area surrounding the tent cities.

And then it rains . . . and the rainwater is now contaminated with fecal matter and urine. The tents are awash in this contaminated water. Children slip and slide and slosh and sleep in it.

There are no places to play. There is no school. Volunteer teachers from the United States come once a week and hold English classes for a few hours with the children. But this is not school, it is entertainment.

Daily, volunteers from Brownsville bring meals to the families. They can feed perhaps 800 people, but not the 1,500 folks living there. Infrequently, the Mexican government will feed up to 200 people.

Practically speaking, there is no food, there is no drinking water, there is no system in place to deal with human waste.

The Migrant Protocol (MPP) was predicated on an agreement that Mexico would provide shelter and protection for these families. This was an impossible condition for Mexico to fulfill, given its inability to protect its own citizens from organized crime. The immigrants are completely vulnerable to the gangs, and, oft times, to the police, who can be one and the same. In Tamaulipas, for example, amongst an uncountable tally of examples, I would cite:

Nuevo Laredo—a woman left a shelter for food and never returned.

Three adult Venezuelan women with a child asked for help getting to a shelter in Nuevo Laredo, but were dragged away by armed men.

Another man ran screaming into an office in Nuevo Laredo asking for help but was dragged away by men with heavy tattoos.

A gang tried to raid a shelter, and the pastor who ran the shelter tried to resist. He was taken away 3 months ago and there is no news of his whereabouts.

In Reynosa (across the river from McAllen), a couple was kidnapped and threatened with being sold for their organs. They managed to escape and crossed the river into the USA but were returned under MPP. They are terrified of being caught by the same local gang.

In Matamoros, 2 young women with young sons were sent to Nuevo Laredo and immediately kidnapped and held in a stash house. Since they had no relatives in the USA to pay ransom, the gangs dumped them out and told them, that if they ever return to Nuevo Laredo, they will be killed. They are waiting in Matamoros in tents for their court hearings. They have no idea what happened to the others in the stash house.

A young mother sent back to Matamoros, Mexico under MPP was gang-raped multiple times this past week in front of her 3-year-old son. She suffered internal injuries from the sexual assault.

I evaluated a 3-year old girl in Matamoros, who had quit talking and was no longer potty-trained following the trauma witnessed in her home country and the 3-month-long journey across Mexico constantly hiding in the grass and woods from gangs, militia, and Mexico immigration officials. She had signs of malnutrition.

So, what have we done as a country to solve the problem of overcrowded, unsanitary, cold processing centers? We have dumped them in Mexico in overcrowded, unsanitary tent cities, even as winter bears down upon us. Only emergency medical care being provided by the Mexican Red Cross. While there are new volunteer medical organizations in the area, they are not connected with the Mexican health officials, clinics, or hospitals. It is a recipe for disaster.

The solution is simple: Reverse the Migrant Protection Protocol. Let the children and their families come into the United States to live with their family and friends as they process their legitimate claims for asylum. Do this before we as a Nation are yet, once again, responsible for the entirely preventable deaths of the innocents who thought that they could trust us.

Keep the Faith and the Fight!

STATEMENT OF HIAS

NOVEMBER 19, 2019

HIAS, the American Jewish Community's global refugee organization, remains deeply opposed to the Migrant Protection Protocols, the "Remain in Mexico" policy, and all other efforts to keep asylum seekers away from our border and out of our asylum system. The right to seek asylum stems from the 1951 Refugee Convention and has been the law in this country since the 1980 Refugee Act. In the year since the Migrant Protection Protocols were first announced by the Department of Homeland Security, nearly 50,000 asylum seekers have been sent back to Mexico to wait weeks—or in some cases months—for their court hearings. In Mexico, these asylum seekers are facing a devastating humanitarian crisis that has been caused by the U.S. Government's policies that show a complete disregard for the safety and humanity of people fleeing violence and persecution in our region, many of whom are children.

Many refugees returned to Mexico find themselves in cities that have Department of State Travel Advisory warnings on par with countries like Syria. With little money, no opportunity for work, and unstable shelter, returned asylum seekers become targets for organized criminal groups and corrupt law enforcement agents who routinely kidnap, torture, rape, and extort them. In Ciudad Juárez, Mexico, women told HIAS staff that they feared leaving the migrant shelter because they could see their persecutors from their home countries standing outside of the gates. For thousands who are not able to find shelter and protection at all, sleeping on the streets in front of ports of entry, without adequate access to water, food, or proper sanitation is their best option.

HIAS is concerned that as numbers of migrants placed in MPP continues to grow, the backlog for court dates will increase, leading to longer wait times and more strain on shelters and assistance providers in Mexico. With little support from the U.S. and Mexican governments, and NGOs unable to meet the enormous needs, asylum seekers endure even more threatening and dire conditions. HIAS urges significant oversight of the Remain in Mexico policy, with special attention to the devastating humanitarian impact of this policy. We call on Congress to enact legislation that reinforces and strengthens laws that protect the right to seek asylum and reject the administration's policies to deter, harm, and punish refugees at our Southern Border seeking safety.

JOINT LETTER FROM MISCELLANEOUS ORGANIZATIONS

November 18, 2019.

The Honorable JERROLD NADLER,
Chair, House Committee on the Judiciary,
 The Honorable BENNIE G. THOMPSON,
Chair, House Committee on Homeland Security,
 The Honorable JAMIE RASKIN,
Chair, House Subcommittee on Civil Rights and Civil Liberties,
 The Honorable ZOE LOFGREN,
Chair, House Judiciary Immigration & Citizenship Subcommittee,
 The Honorable KATHLEEN RICE,
Chair, House Subcommittee on Border Security, Facilitation & Operations, U.S.
House of Representatives, Washington, DC 20515.

Re: Request for Action to End “Remain in Mexico” Program

DEAR MEMBERS OF CONGRESS: We are immigration, human rights, and civil rights organizations and academics, and we write to request that you take action to end the Trump administration’s “Remain in Mexico” program, formally referred to by the administration as the “Migrant Protection Protocols” (“MPP”). The Remain in Mexico policy places asylum seekers in great danger, violates U.S. law, due process, and international legal obligations, and operates with surgical precision to ensure that Latin American asylum seekers will almost never be granted humanitarian relief and protection from the violence they are fleeing. We urge you to take action to oversee, investigate, and introduce measures to defund and end this unprecedented policy; we understand that oversight hearings will be conducted tomorrow.

The Department of Homeland Security (“DHS”) announced Remain in Mexico in December 2018 and implementation began in January 2019.¹ As of October 28, 2019, there are 6 cities along the U.S.-Mexico border where Remain in Mexico is in effect—San Ysidro, Calexico, El Paso, Eagle Pass, Laredo, and Brownsville.² Remain in Mexico violates and evades U.S. asylum law and betrays the core values of asylum policy—to provide safety and due process to people seeking U.S. refugee protection.

For decades prior to implementation of the Remain in Mexico policy, asylum seekers who arrived at the Southern U.S. border pursued their asylum claims from within the United States. Typically asylum seekers were paroled into the United States, placed into an alternatives-to-detention program, or detained within the United States while their case proceeded before the immigration courts (assuming they passed a Credible Fear Interview, for those individuals subject to expedited removal).³ Under Remain in Mexico, asylum seekers are “made to wait in Mexico until an immigration judge resolves their asylum claims.”⁴ This “wait” can take many months.⁵ Despite the overwhelming and ever-present dangers targeting migrants in Northern Mexico, fewer than 1,000 of the over 55,000 migrants placed in the Remain in Mexico program have been allowed to stay in the United States while pursuing their cases.⁶ USCIS asylum officers attest that the fear-screening standard

¹Policy Guidance for Implementation of the Migrant Protection Protocols, Kirstjen Nielson, Secretary, Dept. of Homeland Sec., at 1 (Jan. 29, 2019) [Hereinafter “Policy Guidance”] (on file with author). See also Letter from Members of Congress to DHS Office of Inspector General, seeking investigation into the “Remain in Mexico” program, Oc. 17, 2019, https://cdn.vox-cdn.com/uploads/chorus_asset/file/19297475/MPP_letter_to_IG.pdf.

²HUMAN RIGHTS FIRST, ORDERS FROM ABOVE: MASSIVE HUMAN RIGHTS ABUSES UNDER TRUMP ADMINISTRATION RETURN TO MEXICO POLICY 3, 12 (2019), <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

³*Innovation Law Lab v. McAleenan*, 924 F.3d 503, 506 (9th Cir. 2019) (per curiam) (staying the preliminary injunction; that injunction is once again before the Ninth Circuit and oral argument took place on Oct. 1, 2019).

⁴Id.

⁵See HUMAN RIGHTS FIRST, *supra* note 2 at 4, 6 (recounting months-long wait times).

⁶See Dep’t of Homeland Sec., Assessment of the Migrant Protection Protocols (MPP) 5 (Oct. 28, 2019), https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (“As of October 15, 2019, USCIS completed over 7,400 screenings to assess a fear of return to Mexico . . . Of those, approximately 13 percent have received positive determinations.”).

and procedures currently in place “virtually guarante[e] a violation” of international treaty obligations.⁷

Migrants forced to remain in Mexico face violence and kidnappings as well as threats to life, health, and well-being. One study found that between 21 percent and 24 percent of migrants in the Remain in Mexico program report receiving threats of violence while in Mexico, and of those, over 50 percent report that the threats turned into actual violence, including beatings, robbery, and extortion.⁸ Journalistic accounts indicate that the actual rate of systematic violence faced by asylum seekers is higher, especially in Northern Mexican cities along the Texas border where kidnappings are common.⁹ As the administration is well aware, drug and criminal cartels operate with impunity in Northern Mexican cities including Matamoros and Nuevo Laredo, and they have systematically targeted migrants.¹⁰ In addition, because cities in Northern Mexico long ago ran out of shelter space, thousands of migrants live in encampments on the streets, without regular access to food, potable water, or sanitation facilities.¹¹ Despite the best efforts of faith-based and civic organizations, thousands of migrants are homeless and destitute,¹² lacking access to necessary health care.¹³ The longer an asylum seeker must “wait” in Mexico, the higher their risk of violence, homelessness, and discrimination.¹⁴

Further, Remain in Mexico has been used as a tool in the administration’s separation of more than 1,000 children from their families, even after a Federal court and the President ended family separation as a policy in June 2018. In multiple cases, children arrived at the U.S.-Mexico border with a parent but were separated, rendered unaccompanied by DHS officials, and transferred to ORR facilities across the country, while their parents were subjected to Remain in Mexico.¹⁵ It is nearly impossible to advocate for these children or secure their reunification when the location of their parents and family members is unknown or unstable due to conditions in Mexico.¹⁶

In addition, the Remain in Mexico program subjects asylum seekers to numerous due process violations,¹⁷ making it almost impossible for them to pursue their asylum cases. As a result, many will be unfairly denied asylum and returned to situations of extreme danger in their home countries.

⁷ Brief of Amicus Curiae Local 1924 at 18, *Innovation Law Lab v. McAleenan*, No. 19–15716 (9th Cir. Jun. 26, 2019) (representing the interests of union-members, including numerous USCIS employees).

⁸ TOM K. WONG, U.S. IMMIGRATION POLICY CTR., SEEKING ASYLUM: PART 2, at 9 (2019), <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

⁹ Id.

¹⁰ Mexico Travel Advisory, U.S. DEPT OF STATE (Apr. 9, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (“Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common [in Tamaulipas State].”); HUMAN RIGHTS FIRST, supra note 2, at 4 (2019), <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

¹¹ HUMAN RIGHTS WATCH, “WE CAN’T HELP YOU HERE”: U.S. RETURNS OF ASYLUM SEEKERS TO MEXICO 18–20 (2019).

¹² Despite earlier promises to the contrary, the Mexican government has failed to provide migrants with humanitarian visas or work authorization, leaving them “stranded for prolonged periods . . . with no way to support themselves.” Id. at 2, 6.

¹³ U.S. *Remain in Mexico’ Policy Endangers Lives of Asylum Seekers in Tamaulipas State*, MEDECINS SANS FRONTIERES/DOCTORS WITHOUT BORDERS (Sept. 5, 2019), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/us-remain-mexico-policy-endangers-lives-asylum-seekers-tamaulipas>.

¹⁴ WONG, supra note 8, at 9–10.

¹⁵ See Letter from Women’s Refugee Comm’n to Cameron Quinn, Office of Civil Rights & Civil Liberties, and Joseph Cuffari, Inspector Gen., Dep’t of Homeland Sec. (Aug. 16, 2019), https://www.womensrefugeecommission.org/images/zdocs/Separation-of-families-via-the_Migrant-Protection-Protocols_WRC-complaint-to-DHS.pdf.

¹⁶ See *US: Family Separation Harming Children, Families*, HUMAN RIGHTS WATCH (July 11, 2019), <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families> (explaining that children’s family in Mexico may not have access to cell phones or other forms of communication).

¹⁷ See U.S. CONST. amend V; 8 U.S.C. § 1101(a)(42) (defining “refugee”). Remain in Mexico also violates principles of international human rights law. See International Covenant on Civil and Political Rights, Art. 6, 7, 13, 14, Dec. 9, 1966, 999 U.N.T.S. 171 (ratified June 8, 1992) (establishing a right to life, to freedom from torture, and to due process, particularly for migrants); Convention Relating to the Status of Refugees, Art. 31, Apr. 22, 1954, 189 U.N.T.S. 150 (delineating international obligation to accept refugees who unlawfully entered the country of refuge); Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, Art. I, XI, XVI, XVIII, XXVII, 2 May 1948, <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm> (declaring rights to life, liberty, personal safety, health and wellbeing, fair trial, and the right to asylum).

First, despite knowing the dangers to migrants in Northern Mexico, DHS officials at ports of entry fail to ask asylum seekers whether they will face danger if they are made to wait in Mexico, in violation of binding principles of non-refoulement.¹⁸

Second, DHS fails to provide safe and assured transportation to and from removal proceedings for those who are made to wait in Mexico. Rather, DHS requires migrants to navigate through border areas controlled by deadly cartels seeking to kidnap and extort them, in order to make it to a port of entry—often at 4 o'clock AM, only to wait in line for several hours, often with minor children in tow, for court hearings that begin at 8 o'clock AM or later.¹⁹ As a result, cartels in Northern Mexico have kidnapped migrants in MPP on their way to and from the port of entry.

Third, DHS provides no exceptions for asylum seekers who are unable to make it to the port of entry on time because of cartel threats, kidnapping, or assault.²⁰ DHS seeks in absentia removal orders for all Remain in Mexico migrants who fail to appear for their court hearings, without exception.

Fourth, the Remain in Mexico program impedes access to counsel by placing asylum seekers in Mexico, at great distance from the vast majority of immigration attorneys. People with cases in immigration court have the right to counsel at their own expense.²¹ However, approximately 98 percent of the 47,313 asylum seekers in the Remain in Mexico program were unrepresented as of September 2019.²² Outside of Remain in Mexico, about 63 percent of immigrants in removal proceedings are unrepresented.²³ Because Remain in Mexico asylum seekers are barred from entering the United States except for brief appearances at immigration court hearings, they are unable to meet with U.S.-based immigration attorneys, making it virtually impossible to obtain counsel. Asylum success rates drastically increase for migrants who secure counsel. For those migrants who are miraculously able to secure counsel, attorneys are drastically limited in the representation they can provide—given the complex legal standards and the trauma experienced by asylum seekers, meaningful representation requires many hours of client interviews and preparation, and this work simply cannot take place when lawyer and client are separated by an international border.²⁴

U.S.-based immigration attorneys hesitate to take cases if they cannot meet face-to-face with their clients to discuss sensitive facts in their asylum cases. These attorneys hesitate to travel to notoriously dangerous areas of Mexico, including Matamoros or Nuevo Laredo, because the U.S. State Department designates the Mexican state of Tamaulipas, where these cities are located, a Level 4 “Do Not Travel” zone due to “crime and kidnapping.”²⁵ Attorneys are understandably unwilling to risk their lives to take on Remain in Mexico clients.²⁶ Additionally, cartels and criminal organizations who target asylum seekers are acutely aware of any U.S. contacts migrants have. Having counsel in the United States actually increases the risk of dan-

¹⁸ WONG, supra note 8, at 8.

¹⁹ Molly Hennessy-Fiske, *Tent Courts Open as Latest Hurdle for Migrants Seeking Asylum in the U.S.*, LA TIMES (Sept. 16, 2019), <https://www.latimes.com/world-nation/story/2019-09-16/secretive-tent-courts-latest-hurdle-for-asylum-seekers>.

²⁰ See *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process*, HUMAN RIGHTS FIRST 16 (2019), <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf> (“[A]sylum seeker[s] . . . missed their initial immigration court hearing in early July because they had been kidnapped and were being held for ransom in Ciudad Juárez at the time. A judge at El Paso immigration court ordered them removed in absentia.”).

²¹ See 8 C.F.R. § 1240.10(a) (“Advise the respondent of his or her right to representation, at no expense to the government, by counsel of his or her own choice authorized to practice in the proceedings and require the respondent to state then and there whether he or she desires representation.”).

²² Details on MPP (Remain in Mexico) Deportation Proceedings, TRAC IMMIGRATION (Sep. 2019), <https://trac.syr.edu/phptools/immigration/mpp/> (follow these steps: check “Measure” as “Current Status”; check “Graph Time Scale” as “by Month and Year”; select “Hearing Location” on leftmost dropdown menu; select “Represented” on center dropdown menu; check “Represented” on rightmost dropdown menu) (last visited Nov. 3, 2019).

²³ INGRID EAGLY & STEVEN SHAFER, ACCESS TO COUNSEL IN IMMIGRATION COURT 2 (2016). Migrants with representation are 4 times more likely to be released from detention, and 11 times more likely to seek asylum than those without counsel. *Id.* Migrants with representation are much more likely to obtain the relief they seek. *Id.* at 3.

²⁴ See HUMAN RIGHTS WATCH, supra note 11, at 35 (“[T]here are limited opportunities for the communication required to prepare asylum seekers’ cases, according to attorneys and shelter operators.”).

²⁵ Mexico Travel Advisory, U.S. DEPT OF STATE (Apr. 9, 2019) <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

²⁶ See HUMAN RIGHTS WATCH, supra note 11, at 34 (describing the danger to attorneys who cross the border to represent migrants).

ger for a migrant since it adds visibility through in-person meetings or phone contact.

Fifth, the immigration court hearings themselves, conducted by Executive Office of Immigration Review (“EOIR”) judges, subject Remain in Mexico migrants to further violations of procedural due process. Many of the hearings are conducted by video, often with the asylum seeker sitting in a portable trailer in a hastily-constructed temporary tent compound. Court observers have noted that lapses in video connectivity prohibit judges located remotely from conducting effective hearings for asylum seekers in the Remain in Mexico program. Inaccuracies in translation further compound the errors. In addition, EOIR judges do not provide consistent information about the process to asylum seekers (e.g., how to turn in the application for asylum, and the consequences of missing a court date) and do not ask every asylum seeker if they are afraid to return to Mexico. Sometimes DHS provides asylum seekers with a Notice to Appear (the charging document) indicating the wrong date or location of the hearing. DHS only provides court documents (such as the Notice to Appear and the asylum application) in English, and asylum seekers must submit all applications and evidence in English, although they are trapped in Mexico without U.S. attorneys to assist them.

The Remain in Mexico policy violates fundamental due process principles.²⁷ We implore the U.S. Congress to respond accordingly. We ask that you take the necessary steps to defund and end this policy that undermines domestic and international legal protections for asylum seekers.

Sincerely,

ORGANIZATIONS

Alabama Coalition for Immigrant Justice	Cien Amigos
Advocate Visitors with Immigrants in Detention in the Chihuahuan Desert	Club Taji Ciudad Hidalgo
Al Otro Lado	Coalición de Derechos Humanos
Alianza Americas	Coalition for Humane Immigrant Rights—CHIRLA
American Civil Liberties Union	Colectivo Mujeres Transnacionales
American Gateways	Columbia Law School Immigrants’ Rights Clinic
American Immigration Lawyers Association	Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Americans for Immigrant Justice	Cornell Law School’s Asylum and Convention Against Torture Appellate Clinic
Arab American Family Services	DC—MD Justice For Our Neighbors
Asian Americans Advancing Justice/ Chicago	Ecuandureo Unido
ASISTA Immigration Assistance	End Streamline Coalition
Asylum Seeker Advocacy Project (ASAP)	Equal Justice Center
Bay Area Sex Worker Advocacy Network (BAYSWAN)	Familias Unidas en Acción
Bellevue Program for Survivors of Torture	Families Belong Together México
Beyond Legal Aid	Families Belong Together
Border Crit Institute	Federación de Clubes Michoacanos en Illinois
Boston University School of Law, Immigrants’ Rights and Human Trafficking Program	Federación de Clubes Unidos Zacatecanos en Illinois
Brighton Park Neighborhood Council	Freedom for Immigrants
Capital Area Immigrants’ Rights Coalition	Government Accountability Project
Catholic Migration Services	Grassroots Leadership
Center for Gender & Refugee Studies	Guatemala Solidarity Boston
Center for Justice and International Law (CEJIL)	Hispanic Liaison/El Vínculo Hispano
Centro Legal de La Raza	Houston Immigration Legal Services Collaborative
Children’s Defense Fund—National Office	Tahirih Justice Center, Houston Office
Children’s Defense Fund—Texas	Human Rights Coalition
Christian Community Development Association	Human Rights Initiative of North Texas
Christian Reformed Church Office of Social Justice	Illinois Coalition for Immigrant and Refugee Rights
	Immigrant Families Together
	Immigrant Legal Advocacy Project
	Immigrant Legal Resource Center

²⁷ See supra note 17 and accompanying text.

Indivisible Sacramento	Quixote Center
IRCSGV	Refugee and Immigrant Center for Education and Legal Services (RAICES)
Jefferson County Immigrant Rights Advocates (JCIRA)	Refugee Solidarity Network
Jesus Nebot International	Refugees International
Kids in Need of Defense	Religious of the Sacred Heart of Mary, Western American Province
La 72, Hogar—Refugio para Personas Migrantes	Safe Passage Project
Lake County Immigrant Advocacy	School Sisters of Notre Dame—Central Pacific Province
Latin America Working Group (LAWG)	Sisters of St. Francis of Philadelphia
Legal Aid Justice Center	Sisters of St. Joseph of Orange
Living Hope Wheelchair Association	South Texas Human Rights Center
Lowcountry Immigration Coalition	Southern Poverty Law Center
Lutheran Immigration and Refugee Service	Southwest Suburban Immigrant Project
Mano a Mano Family Resource Center	Still Waters Anti-Trafficking Program
Migrant Center for Human Rights	Student Action with Farmworkers
National Advocacy Center of the Sisters of the Good Shepherd	The Alliance
National Center for Youth Law	The Chelsea Collaborative
National Immigrant Justice Center	The Rhizome Center for Migrants
National Immigration Project of the National Lawyers Guild	Truah: The Rabbinic Call for Human Rights
National Korean American Service and Education Consortium, Illinois	Texas Center for Community Services
Coalition for Immigrant and Refugee Rights	U.S. Committee for Refugees and Immigrants (USCRI)
National Network for Immigrant and Refugee Rights	UNC School of Law Clinical Programs
National Partnership for New Americans (NPNA)	Unitarian Universalist Association
NETWORK Lobby	Unitarian Universalist Service Committee
New Mexico Immigrant Law Center	University of Maryland Carey Immigration Clinic
Northern Manhattan Coalition for Immigrant Rights (NMCIR)	University of Tulsa College of Law Legal Clinic
Pangea Legal Services	US Human Rights Network
PASO—West Suburban Action Project	Washington Office on Latin America
Priests of the Sacred Heart, USA Province	WESPAC Foundation
Project IRENE	WITNESS
Project On Government Oversight	Women in Migration Network (WIMN)
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	Lauris Wren, Clinical Professor of Law, Maurice A. Deane School of Law, Hofstra University

STATEMENT OF HUMAN RIGHTS WATCH

NOVEMBER 19, 2019

Chairman Thompson, Chairwoman Rice, Ranking Member Rogers, Ranking Member Higgins, and distinguished Members of the Border Security, Facilitation, and Operations Subcommittee, thank you for the opportunity to submit a written statement into the record for today's hearing, "Examining the Human Rights and Legal Implications of DHS's 'Remain in Mexico' Policy."

Human Rights Watch is a non-profit, independent organization that investigates allegations of human rights violations in more than 90 countries around the world, including the United States. We document human rights violations, issue detailed reports, and advocate for changes in law, policy, and practice to address the harms.

In July 2019, Human Rights Watch released a report entitled, "We Can't Help You Here": US Returns of Asylum Seekers to Mexico, on the Migrant Protection Protocols ("MPP") program.¹ In September and October 2019, we released updates on the escalating abuses of the program.² As part of our investigations into the human rights impact of this program, we have interviewed dozens of asylum seekers in Ciudad Juárez, Matamoros, and Reynosa, Mexico, as well as Mexican officials, U.S. attorneys, U.S. immigration court workers, advocates, and others. We have heard first-hand the testimonies of people who have described being kidnapped, raped, and assaulted; families with children who lack adequate shelter; and asylum seekers who face high if not insurmountable barriers receiving due process on their asylum claims.

Since the start of the MPP program in January 2019, over 55,000 asylum seekers, including at least 16,000 children, have been returned to Mexico. Customs and Border Protection ("CBP") continues to return asylum seekers with disabilities or other chronic health conditions to Mexico, despite the Department of Homeland Security's initial guidance that no one with "known physical/mental health issues" would be placed in the program. In Ciudad Juárez, Human Rights Watch documented 6 such cases, 4 of them children, in August and September alone. Human Rights Watch has also found that the Mexican government does not have a proper system in place there to screen and identify asylum seekers with disabilities and chronic health conditions. The authorities have not ensured physical accessibility in shelters, even new ones. Nor are they consistently providing information about and access to health care for asylum seekers with disabilities or chronic health conditions.

A program that was initially limited to Tijuana and Mexicali now includes Ciudad Juárez, Matamoros, Reynosa, and Nuevo Laredo, some of the most dangerous cities in Mexico.

Matamoros, Reynosa, and Nuevo Laredo are in the state of Tamaulipas, for which the U.S. State Department Travel Advisory is "Do Not Travel," the same as for Afghanistan and Syria.

¹ Human Rights Watch, "We Can't Help You Here." US Returns of Asylum Seekers to Mexico, July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

² Human Rights Watch, "Mexico: Risks at Border for Those With Disabilities," October 29, 2019, <https://www.hrw.org/news/2019/10/29/mexico-risks-border-those-disabilities>; Human Rights Watch, "US Move Puts More Asylum Seekers at Risk," September 25, 2019, <https://www.hrw.org/news/2019/09/25/us-move-puts-more-asylum-seekers-risk>.

The inherently inhumane “Remain in Mexico” program is getting more abusive by the day. The program’s rapid growth in recent months has put even more individuals and families in danger in Mexico while they await an increasingly unfair legal process in the United States.

ASYLUM SEEKERS STRANDED WITH NO MEANS TO SURVIVE

Asylum seekers who spoke to Human Rights Watch expressed fear and confusion at the prospect of being made to wait in a city where they did not have social ties, legal authorization to work, and access to shelter, since the number of asylum seekers in the city already far exceeded available free shelter space.

In the MPP program, those who can’t afford to pay for a hotel room or private residence sleep on the streets or stay in churches or abandoned homes. Most asylum seekers fleeing Central America have extremely limited means and often cannot pay for shelter, food, water, or other necessities. In particular, in Matamoros, Mexico, as many as 1,500 migrants are living in a tent encampment near the Brownsville port of entry amid deteriorating medical and sanitary conditions.³ If these asylum seekers were pursuing their cases in the United States, they would more likely be able to access support to sustain themselves while their claims are pending through personal networks. Although asylum seekers are not legally eligible to apply for work in the United States until their cases have been won or 150 days have passed, nearly 84 percent of the asylum seekers in the MPP program reported having relatives in the United States, according to the Mexican government.

RETURNED ASYLUM SEEKERS FACING PHYSICAL VIOLENCE, THREATS

The precarious existence of asylum seekers and their identity as non-Mexicans in northern Mexico increases their vulnerability to physical harm.

According to the Mexican government, the country is currently facing a violent public security crisis. Mexico recorded more intentional homicides in 2018 than it has since the country began keeping records in 1997, and 3 of the states to which asylum seekers are being returned under MPP, Baja California, Chihuahua, and Tamaulipas, are among the most violent in the country.

Among those asylum seekers Human Rights Watch interviewed, several reported attacks on themselves or others, including kidnapping, sexual violence, and other violent assaults. For example:

- Delfina M. (pseudonym), 20, an asylum seeker who fled Guatemala with her 4-year-old son, said that after she was returned to Ciudad Juárez, two men grabbed her in the street and sexually assaulted her, which her son witnessed. They told her not to scream and threatened to kill her son. “I can still feel the dirtiness of what they did in my body,” she said.
- Rodrigo S. (pseudonym), 21, who fled El Salvador, told a judge in immigration court proceedings that he was robbed at knifepoint and stabbed in the back. He said he went to the police, but the Mexican officers wouldn’t help him because he wasn’t a Mexican citizen. He told the judge that although he is recovering physically, he’s afraid to be sent back.
- Esteban G. (pseudonym), 19, said in immigration court he was robbed when he left his room to go to the store for food. He told police he suspected a neighbor of stealing his cell phone. When police investigated the neighbor, they recovered his cell phone, but after that, the neighbor’s family threatened to hurt him.
- Kimberlyn, a 23-year-old Honduran, told Human Rights Watch she had been kidnapped by a taxi driver along with her 5-year-old daughter upon returning to Ciudad Juárez after her first court hearing in the United States in April. The driver released them within hours but said he would kill them if her family did not pay a ransom. She showed Human Rights Watch deposit receipts for \$800 in payments made by relatives in Honduras.

Human Rights Watch additionally spoke with two asylum seeker mothers with small children who said they were kidnapped in Nuevo Laredo in early October on their way to present themselves at the Laredo port of entry for a court hearing. Upon their release, the kidnappers told them they had to leave town or die. They consequently missed their court hearing in Laredo and were likely ordered removed in absentia. The Mexico City-based Institute for Women in Migration has docu-

³Nomaan Merchant, Tents, stench, smoke: Health risks are gripping migrant camp, The Associated Press, November 14, 2019, <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.

mented 212 kidnappings of migrants in the State of Tamaulipas from mid-July through October 15 with 197 occurring in Nuevo Laredo.⁴

Despite these risks, the program's "nonrefoulement" screening process administered by U.S. Citizenship and Immigration Services asylum officers to determine whether a migrant faces harm in Mexico has come under criticism from U.S. officials involved in administering interviews or who have reviewed the process.⁵ According to BuzzFeed News, a team of senior Department of Homeland Security ("DHS") officials who examined the Remain in Mexico program found that asylum officers face pressure in at least some locations along the border to "arrive at negative outcomes when interviewing migrants on their claim of fear of persecution or torture."⁶

SEVERELY LIMITED ACCESS TO ATTORNEYS, CHAOTIC, CLOSED COURT HEARINGS

Meanwhile, asylum seekers forced to remain in Mexico have no meaningful due process. Immigration attorneys and advocates in the United States indicate the need for legal services for returned asylum seekers in Mexico is overwhelming and that attorneys working to provide low-cost or free representation face serious barriers to providing that representation, including returned asylum seekers' lack of fixed addresses and telephone numbers. According to the Transactional Records Access Clearinghouse at Syracuse University, a research center that examined U.S. immigration court records through September 2019, only 2 percent of returnees have legal representation.⁷

In recent months, the U.S. Government has raised new barriers to obtaining representation and accessing counsel and the immigration courts are increasingly closed to the public. During the week of September 9, the Trump administration began conducting hearings for asylum seekers returned to Mexico in makeshift tent courts in Laredo and Brownsville, where judges are expected to preside via video-conference. Citing "heightened security measures" since the courts are located near the border, DHS has denied attorneys without a signed representation agreement, as well as journalists, entry to these port-of-entry courts.⁸ Obtaining a signed representation agreement outside of court for attorneys seeking to represent clients who are part of the Remain in Mexico program implies difficult and potentially dangerous travel to Mexico.

The United States should immediately cease returning asylum seekers to Mexico and instead ensure them access to humanitarian support, safety, and due process in asylum proceedings here in the United States. Congress should urgently act to prohibit using Government funds to continue this program. The United States should manage asylum-seeker arrivals through a genuine humanitarian response that includes a fair determination of an asylum seeker's protection claim in a safe and dignified environment that enables that person to seek legal and social support while their claim is pending so they will not be forced to abandon their claims for protection because of fear or destitution.

STATEMENT OF THE INTERNATIONAL REFUGEE ASSISTANCE PROJECT (IRAP)

NOVEMBER 18, 2019

ABOUT THE INTERNATIONAL REFUGEE ASSISTANCE PROJECT

The International Refugee Assistance Project (IRAP) provides comprehensive legal services to refugees and displaced persons. Since our establishment, we have provided legal assistance to thousands of displaced persons seeking legal pathways

⁴Maria Verza, Migrants thrust by US officials into the arms of the cartels, November 15, 2019, https://www.washingtonpost.com/world/the_americas/migrants-thrust-by-us-officials-into-the-arms-of-the-cartels/2019/11/15/84770670-07e5-11ea-ae28-7d1898012861_story.html.

⁵Greg Sargent, In scathing manifesto, an asylum officer blasts Trump's cruelty to migrants, *The Washington Post*, November 12, 2019, <https://www.washingtonpost.com/opinions/2019/11/12/scathing-manifesto-an-asylum-officer-blasts-trumps-cruelty-migrants/>.

⁶Hamed Aleaziz, U.S. Border Officials Pressured Asylum Officers To Deny Entry To Immigrants Seeking Protection, A Report Finds, *BuzzFeed News*, November 14, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/dhs-asylum-report-mpp-immigration-remain-mexico>.

⁷TRAC Immigration, Access to Attorneys Difficult for Those Required to Remain in Mexico, <https://trac.syr.edu/immigration/reports/568/>.

⁸Bianca Seward, Mariana Atencio and Daniella Silva, Tent court hearings for migrants ramp up in Texas as lawyers decry lack of access, *NBC News*, September 16, 2019, [nbcnews.com/news/latino/tent-court-hearings-migrants-ramp-texas-lawyers-decry-lack-access-n1054991](https://www.nbcnews.com/news/latino/tent-court-hearings-migrants-ramp-texas-lawyers-decry-lack-access-n1054991).

from conflict zones to safe countries. IRAP provides pro bono legal representation, legal advice, and expert referrals to refugees all over the world.

IRAP's goal is to ensure that available services and legal protections go to those who are most in need. Our clients include LGBTI individuals, religious minorities subject to targeted violence, survivors of sexual and gender-based violence, children with medical emergencies for which local treatment is not available, and interpreters being hunted down by the Islamic State, militias, and the Taliban in retaliation for their work with the United States and NATO. Our clients also include individuals who are seeking asylum in the United States and individuals in the United States who are seeking family reunification with members of their family still outside of the country.

THE "REMAIN IN MEXICO" POLICY

The Department of Homeland Security (DHS) began instituting in January 2019 the "Migrant Protection Protocols" (MPP)—i.e., the "Remain in Mexico" Policy—whereby certain immigrants entering or seeking admission to the United States from Mexico without proper documentation "may be returned to Mexico and wait outside of the United States for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay."¹ This includes asylum seekers, persons seeking protection under withholding of or protection from removal, and persons "who claim a fear of return to Mexico at any point during apprehension, processing, or such proceedings, but who have been assessed not to be more likely than not to face persecution or torture in Mexico."²

Such individuals will be given a "Notice to Appear" for their immigration court hearing, will be returned to Mexico until their hearing date, and are to be allowed to return to the United States to enter and attend immigration court hearings if necessary, before returning to Mexico to await a final determination.³

As motivation for MPP, DHS has stated that "will help restore a safe and orderly immigration process, decrease the number of those taking advantage of the immigration system, and the ability of smugglers and traffickers to prey on vulnerable populations, and reduce threats to life, National security, and public safety, while ensuring that vulnerable populations receive the protections they need." DHS has repeatedly stated that immigrants waiting in Mexico will be provided with appropriate humanitarian protection for the duration of their stay there.

MPP is one component of a multi-pronged attempt to undermine and dismantle the long-standing American asylum system and American tradition of providing safe haven to those fleeing persecution in their countries of origin. This includes proposed and/or implemented policies like the November 2018 asylum ban on those who crossed the southern U.S. border between official ports of entry;⁴ "safe third country" asylum ban of July 2019 on those who passed through a third country en route to seeking safety in the United States;⁵ and increasing the use of immigration detention for families.⁶ Alongside these efforts, MPP violates U.S. international legal obligations and the Congressionally-created U.S. asylum system; puts at serious risk vulnerable individuals who have fled life-threatening danger in their home countries and are returned to dangerous conditions in Mexico rather than being allowed to pursue their asylum claims in the United States; and undermines due process and creates obstacles to representation for asylum seekers.

¹ Department of Homeland Security, "Migrant Protection Protocols," Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> ["DHS, 'Migrant Protection Protocols'"].

² DHS, "Migrant Protection Protocols."

³ Id.

⁴ Department of Homeland Security and the Department of Justice's Notice of Proposed Rulemaking on Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, EOIR Docket No. 18-0501, A.G. Order No. 4327-2018, 83 F.R. 55934, issued Nov. 9, 2018, <https://www.govinfo.gov/content/pkg/FR-2018-11-09/pdf/2018-24594.pdf>.

⁵ Department of Justice and the Department of Homeland Security, Notice of an Interim Final Rule and Request for Comment on Asylum Eligibility and Procedural Modifications, EOIR Docket No. 19-0504, A.G. Order No. 4488-2019, 84 F.R. 33829, issued July 16, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-07-16/pdf/2019-15246.pdf>.

⁶ See, e.g., Department of Homeland Security, Notice of Proposed Rulemaking on the Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, DHS Docket No. ICEB-2018-0002, 83 F.R. 45486, issued September 7, 2019, <https://www.govinfo.gov/content/pkg/FR-2018-09-07/pdf/2018-19052.pdf>.

“REMAIN IN MEXICO” VIOLATES U.S. INTERNATIONAL LEGAL OBLIGATIONS AND THE
CONGRESSIONALLY-CREATED U.S. ASYLUM SYSTEM

The Refugee Act of 1980, including the provisions of the U.S. code relevant to asylum, were enacted by Congress “to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. 6577, to which the United States acceded in 1968.”⁷ The 1967 Protocol amends the 1951 Refugee Convention, and together they create a legal framework to establish the definition and rights of refugees.⁸ By becoming signatories, the 148 countries that are party to one or both of these legal instruments—including the United States—incurred an obligation to individuals who “suffer such serious violations of their human rights that they have to leave their homes, their families, and their communities to find sanctuary in another country.”⁹ Although a Federal court has ruled¹⁰ that the Protocol is not self-executing,¹¹ the Protocol was given domestic legal force by the Refugee Act of 1980, which provides “a useful guide in determining Congressional intent in enacting the Refugee Act.”¹²

Article 33 of the Convention provides that:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹³

As the United Nations High Commissioner for Refugees noted in an amicus curiae brief in litigation of MPP, the core of the Convention and Protocol is this principle of non-refoulement—which means that, in addition to protecting individuals from being sent to a state where they would face persecution, refugees are protected “from being transferred to a state in which they might not face persecution, but from where that state would send the individual on to persecution in a third country, referred to here as ‘chain refoulement.’”¹⁴

The High Commissioner noted that any arrangement involving the return of people who may be in need of international protection from one country to another must “encompass key refugee protection safeguards in order to avoid placing individuals at risk of refoulement. This is so even if the purpose of the transfer is for the asylum seeker to await their asylum determination by the transferring state in the receiving state.” For such arrangement to be legitimate under international law, “it needs to be governed by a legally binding instrument, challengeable and enforceable in a court of law by affected asylum seekers,” and must provide for an individual assessment by the transferring state in each individual case of whether the receiving state will admit the person, permit the person to stay pending determination of their case, and “accord the person standards of treatment commensurate with the 1951 Convention and international human rights standards, including—but not limited to—protection from refoulement.”¹⁵

The Migrant Protection Protocols violate not only the international law, but also the domestic law into which U.S. international legal obligations are incorporated,

⁷ *East Bay Sanctuary Covenant v. Trump*, United States District Court, Northern District of California, “Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction,” Nov. 19, 2018, p. 20 (citing to *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987)).

⁸ UNHCR, “The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol,” Sept. 2011, p. 1, <https://www.unhcr.org/en-us/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>.

⁹ *Id.* at p. 2.

¹⁰ *Khan v. Holder*, 583 F.3d 773, 783 (9th Cir. 2009).

¹¹ “Self-executing” has been defined “at a general level . . . as a treaty that may be enforced in the courts without prior legislation by Congress, and a non self-executing treaty, conversely, as a treaty that may not be enforced in the courts without prior legislative ‘implementation.’” Carlos Manuel Vázquez, Georgetown Law Faculty Publications and Other Works, “The Four Doctrines of Self-Executing Treaties,” p. 1016, 1995, <https://scholarship.law.georgetown.edu/facpub/1016>.

¹² *East Bay Sanctuary Covenant v. Trump*, United States District Court, Northern District of California, “Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction,” Nov. 19, 2018, p. 20 (citing to *Khan v. Holder*, 583 F.3d 773, 783 (9th Cir. 2009)).

¹³ U.N. General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, July 28, 1951, at Art. 33.

¹⁴ The United Nations High Commissioner for Refugees’ Amicus Curiae Brief in Support of Appellees’ Answering Brief, *Innovation Law Lab v. McAleenan*, No. 19–15715, available at <https://www.aclu.org/legal-document/innovation-law-lab-v-mcaleenan-amicus-brief-un-high-commissioner-refugees>.

¹⁵ *Id.* at p. 5–6.

§§ 208–09 of the 1980 Refugee Act.¹⁶ Under the Immigration and Nationality Act (INA) § 208(a)(1), “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such alien’s status, may apply for asylum.”¹⁷ Congress has established in § 208 several statutory exceptions to this general eligibility for asylum, including: Persecuting others on account of their race, religion, nationality, membership in a particular social group, or political opinion; constituting a danger to the United States on account of having been convicted by final judgment of a particularly serious crime; being believed to have committed a serious nonpolitical crime outside of the United States prior to arrival; being reasonably regarded as a danger to the United States; and having been firmly resettled in another country prior to arriving in the United States.¹⁸

This legal framework for asylum was carefully designed by Congress to balance our National security with the importance of keeping the United States a safe haven for those who flee persecution. Accordingly, people claiming asylum at a port of entry must demonstrate a “credible fear” of persecution to initiate their asylum claim. This threshold accounts for the reality that a vulnerable asylum seeker may not be able to present their strongest case in a single, high-pressure interview—and that the stakes of denying someone the opportunity to present their case more fully, if they have at least a credible fear, are literally life-and-death. If there is even a small chance that someone’s past experience or fear of persecution is well-founded, better to give them the opportunity to present that case fully than take the risk that they will be tortured or killed by their persecutors upon a forced return to their country of origin—or a pushback to a third country that may not be safe for them either, such as Mexico.

As noted above, Congress incorporated the 1967 United Nations Protocol Relating to the Status of Refugees into the Refugee Act of 1980. Congress has expressly legislated that “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .)” may apply for asylum.¹⁹ The United States may create a “safe third country agreement, or a formal agreement with a third country to which a noncitizen might be removed, with a country “in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.”²⁰ But in a leaked memorandum of the Departments of Homeland Security and Justice, the agencies responsible for MPP admit that returning asylum seekers to Mexico does not meet these statutorily-required criteria. The memo noted that a safe third-country agreement with Mexico is “years” away because Mexico must “improve its capacity to accept and adjudicate asylum claims and improve its human rights situation.”²¹

One U.S. asylum officer and attorney, whose email to U.S. Citizenship and Immigration Services refusing to implement MPP was published by the *Washington Post*, wrote that “[t]he MPP is illegal. The program exists without statutory authority [under the Immigration and Nationality Act], violates normal rulemaking procedures under the [Administrative Procedure Act], and violates international law. The program’s execution impairs the fair implementation of our laws and runs directly counter to the values of [the Refugee, Asylum, and International Operations Directorate].”²²

“REMAIN IN MEXICO” ENDANGERS THE HEALTH AND SAFETY OF VULNERABLE ASYLUM SEEKERS

Although the intended effect of MPP is to “help restore a safe and orderly immigration process . . . decrease the number of those taking advantage of the immigration system . . . reduce threats to life, National security, and public safety,

¹⁶ “Refugee Act of 1980,” Public Law 96–212, 94 STAT. 102–118, Mar. 17, 1980 (see § 208, “Asylum Procedures,” and § 209, “Adjustment of Status of Refugees”).

¹⁷ 8 U.S.C. 1158, Immigration and Nationality Act (INA) § 208(a)(1).

¹⁸ 8 U.S.C. 1158, Immigration and Nationality Act (INA) § 208(b)(2).

¹⁹ 8 U.S.C. 1158, Immigration and Nationality Act (INA) § 208(a)(1).

²⁰ 8 U.S.C. 1158, Immigration and Nationality Act (INA) § 208(a)(2)(A).

²¹ Human Rights First, “A Sordid Scheme: The Trump Administration’s Illegal Return of Asylum Seekers to Mexico,” Mar. 2019, at p. 3, https://www.humanrightsfirst.org/sites/default/files/A_Sordid_Scheme.pdf.

²² Sasha Abramsky, *The Nation*, “Trump’s ‘Remain in Mexico’ Policy Isn’t Just Cruel, It’s Illegal,” Nov. 15, 2019, <https://www.thenation.com/article/trumps-remain-in-mexico-policy-isnt-just-cruel-its-illegal/>.

while ensuring that vulnerable populations receive the protections they need,”²³ its practical effect is to aggravate existing backlogs at near ports of entry and to force asylum seekers to wait in difficult and dangerous conditions.

As one journalist has stated, “The basic fact is that too many people are waiting to seek asylum ‘the right way’ in the US. In theory, they have a legal right to it; in practice, it’s by no means a guarantee they’ll be allowed to exercise it The question is how long they can wait before it becomes functionally indistinguishable from being turned away—or before they simply get fed up with being in limbo.”²⁴ There are already significant backlogs of asylum seekers at the border.²⁵

With Customs and Border Protection aggressively using a “metering” system to limit the number of people who are processed for asylum each day to between 40 and 100 persons,²⁶ backlogs along the Southern Border are several weeks-long and several thousand asylum seekers-wide.²⁷ As the 9th Circuit noted in November 2018 with respect to another agency measure designed to curtail asylum rights, “the record establishes that, while the Rule is in effect, these asylum seekers experience lengthy or even indefinite delays waiting at designated ports of entry along the southern border.”²⁸

As of October 2019, nearly 50,000 asylum seekers and migrants had been pushed back by DHS to wait in danger in Mexico—on top of around 26,000 who are stranded there due to the “metering” policy²⁹ by which asylum applicants are turned back at ports of entry to “wait their turn” to apply.

This forces individuals and families already traumatized by what they have experienced in their countries of origin, as well as exhausted from the physical demands of a long journey to the U.S. border, to wait in difficult and dangerous conditions. Shelters are overflowing; municipal services in nearby Mexican cities like Tijuana are breaking down under the strain, and charity and relief workers are struggling to meet demand.³⁰ CNN reporters “found hopeful asylum seekers living amid mud, open sewage, sickness, and piles of trash.”³¹

In addition to these material conditions, Mexico is often just as unsafe for these asylum seekers as the countries they have left behind. The current backlog has pushed many asylum seekers to wait in Tijuana, which *Business Insider* ranked the fifth most dangerous city in the world based on its murder rate of over 100 homicides per 100,000 residents. This is a murder rate even higher than that of the dangerous Northern Triangle countries in Central America from which many of these asylum seekers have fled.³² The 9th Circuit noted that “asylum seekers experience high rates of violence and harassment while waiting to enter, as well as the threat of deportation to the countries from which they have escaped.”³³ In December 2018,

²³ DHS, “Migrant Protection Protocols.”

²⁴ Dara Lind, *Vox*, “The U.S. has made migrants at the border wait months to apply for asylum. Now the dam is breaking,” Nov. 28, 2018, <https://www.vox.com/2018/11/28/18089048/border-asylum-trump-metering-legally-ports>.

²⁵ In late November 2018, a senior Customs and Border Protection official reportedly estimated that there was a 5–6-week backlog at the Southern Border. See, e.g., CNN Wire and Kasia Gregorczyk, *Fox 5 San Diego*, “Migrants may have to wait 6 weeks at border to claim asylum, official says,” Nov. 27, 2018, <https://fox5sandiego.com/2018/11/27/migrants-may-have-to-wait-6-weeks-at-border-to-claim-asylum-official-says/>.

²⁶ Ron Nixon, *New York Times*, “Asylum Claims Jump Despite Trump’s Attempt to Limit Immigration,” Dec. 10, 2018, <https://www.nytimes.com/2018/12/10/us/politics/trump-asylum-border.html>.

²⁷ Jonathan Blitzer, *New Yorker*, “Long Wait for Tijuana’s Migrants to Process Their Own Asylum Claims,” Nov. 29, 2018, <https://www.newyorker.com/news/dispatch/the-long-wait-for-tijuana-migrants-to-process-their-own-asylum-claims>.

²⁸ *East Bay Sanctuary Covenant v. Trump*, United States District Court, Northern District of California, “Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction,” Nov. 19, 2018, p. 30.

²⁹ Human Rights First, “Orders from Above: Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy,” Oct. 2019, at p. 1, <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf> [“HRF, Orders from Above Report”].

³⁰ Jonathan Blitzer, *New Yorker*, “Long Wait for Tijuana’s Migrants to Process Their Own Asylum Claims,” Nov. 29, 2018, <https://www.newyorker.com/news/dispatch/the-long-wait-for-tijuana-migrants-to-process-their-own-asylum-claims>.

³¹ Bob Ortega, CNN, “US asylum seekers face long waits or risky crossings, thanks to supposed capacity crunch,” Dec. 20, 2018, <https://www.cnn.com/2018/12/20/us/us-asylum-seeker-southwest-border-capacity-invs/index.html>.

³² Christopher Woody, *Business Insider*, “These were the 50 most violent cities in the world in 2017,” Mar. 16, 2018, <https://www.businessinsider.com/most-violent-cities-in-the-world-2018-3>.

³³ *East Bay Sanctuary Covenant v. Trump*, United States District Court, Northern District of California, “Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction,” Nov. 19, 2018, p. 30.

two minor boys staying in a Tijuana migrant shelter were murdered, their bodies found stabbed and strangled in an alleyway in the city.³⁴

Human Rights First has documented numerous cases of asylum seekers who faced kidnappings and assaults upon being forced to return to Mexico. For example, a child and his father were kidnapped the same day that DHS returned them to Nuevo Laredo; the kidnappers threatened to take the child's kidneys, and they beat and shot other members of the kidnapped group.³⁵ In September 2019, three armed men broke into a shelter in Ciudad Juárez, where they robbed and assaulted Cuban asylum seekers returned there under MPP, several of whom had to go to a local hospital for treatment. A Honduran asylum seeker was targeted for being a lesbian, and was assaulted and threatened in Matamoros in July after being returned by DHS.³⁶

Indeed, the U.S. State Department has assigned several states in Mexico the same travel classification of Level 4, or "Do not travel," and states that "[v]iolent crime, such as homicide, kidnapping, carjacking, and robbery, is widespread."³⁷ As the *Washington Post* has noted, this Level 4 classification puts Mexico in the same category as war-torn countries like Syria, Yemen, and Afghanistan in terms of danger to travelers.³⁸ If unsafe for ordinary travelers, then Mexico is especially unsafe for asylum seekers who have already fled persecution and are typically vulnerable—including families, LGBTQ individuals, and others who have been persecuted due to some aspect of their identity.³⁹

These individuals and families face an impossible situation, unable to return home to the persecution they fled but also without hope to move forward. Returned to Mexico despite having followed the appropriate procedures to seek asylum in the United States, they struggle to survive amid conditions often similar to those they fled in their home country and remain at risk of refoulement to their home country.

RETURNING ASYLUM SEEKERS TO MEXICO UNDERMINES DUE PROCESS AND ASYLUM SEEKERS' ACCESS TO LEGAL REPRESENTATION, JEOPARDIZING THEIR ASYLUM CASES

The Migrant Protection Protocols create what Human Rights First has called a "due process charade": Asylum seekers face extreme obstacles to accessing counsel and legal information, and to attending and participating in their immigration hearings.⁴⁰ Rather than utilizing normal immigration court facilities, DHS has begun utilizing tent courts at multiple sites in Texas, which are closed to media, public observers, and legal service providers offering legal information sessions and screenings for potential representation.⁴¹ Even where normal immigration court facilities are used, these courts often create obstacles as well. For example, Human Rights Watch found that the immigration court in El Paso prevented lawyers from meeting with clients prior to MPP hearings.⁴²

Being forced to wait in Mexico, moreover, can make it near-impossible for asylum seekers to attend their immigration court hearings. They may miss hearings because they have been kidnapped, because it is too dangerous to make the journey to the port of entry to the United States, or because they are unable to obtain transportation to travel the long distance. For example, Human Rights First has documented a case in which a Honduran man was kidnapped while traveling between Monterrey and Nuevo Laredo to attend his immigration hearing in September;⁴³ taxi drivers and Uber drivers are reportedly refusing to pick up immigrants at Mexican shelters because of the danger that kidnappers and extortionists will target

³⁴Eliot C. McLaughlin and Nicole Chavez, CNN, "3 arrested in slayings of Honduran teens in Tijuana, prosecutor says," Dec. 19, 2018, <https://www.cnn.com/2018/12/19/americas/honduran-migrant-teens-killed-tijuana/index.html>.

³⁵HRF, Orders from Above Report at p. 5.

³⁶HRF, Orders from Above Report at p. 6.

³⁷U.S. Department of State—Bureau of Consular Affairs, "Mexico Travel Advisory," Nov. 15, 2018, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

³⁸Alex Horton, *Washington Post*, "Why the U.S. considers parts of Mexico just as dangerous to visit as Syria and Yemen," Jan. 11, 2018, https://www.washingtonpost.com/news/worldviews/wp/2018/01/11/why-the-u-s-considers-parts-of-mexico-just-as-dangerous-to-visit-as-syria-and-yemen/?noredirect=on&utm_term=.e7acbc5db661.

³⁹Jonathan Blitzer, *New Yorker*, "How the U.S. Asylum System is Keeping Migrants at Risk in Mexico," Oct. 1, 2019, <https://www.newyorker.com/news/dispatch/how-the-us-asylum-system-is-keeping-migrants-at-risk-in-mexico>.

⁴⁰HRF, Orders from Above Report at p. 12.

⁴¹Id.

⁴²Human Rights Watch, "US Move Puts More Asylum Seekers at Risk: Expanded 'Remain in Mexico' Program Undermines Due Process," Sept. 25, 2019, <https://www.hrw.org/news/2019/09/25/us-move-puts-more-asylum-seekers-risk>.

⁴³HRF, Orders from Above Report at p. 15.

such passengers.⁴⁴ As of the end of September, about 38 percent of asylum seekers subjected to MPP had missed a court hearing,⁴⁵ which can put them at risk of being ordered removed in absentia and losing the opportunity to finish making their asylum claim.

Being forced to wait in Mexico also makes it extremely difficult for asylum seekers to obtain legal counsel—to which they have a right under Section 292 of the Immigration and Nationality, and on which the success of their case often depends. The stakes in an asylum case can be literally life-or-death: A successful asylum case wins safety in the United States, while a negative decision results in deportation back to the country of origin, in which the applicant had faced persecution. As a past president of the American Immigration Lawyers Association has noted, the time and difficulty of preparing an asylum case relates not to the strength of the case, but to the difficulty of accessing evidence to meet the particular and specific standards of U.S. asylum law.⁴⁶ In addition to the complexity of U.S. immigration law, language barriers⁴⁷ and experiences of trauma add layers of difficulty to asylum seekers accessing a full and fair consideration of their asylum case.

Legal representation is likely the most outcome-determinative factor in a U.S. asylum case: The Transactional Records Access Clearinghouse at Syracuse University analyzed U.S. immigration court records and found that the odds of gaining asylum are 5 times higher for asylum seekers with legal representation. Without representation, “the deck is stacked against an asylum seeker. Statistically, only 1 out of every 10 win their case.”⁴⁸ But when an asylum seeker is returned to Mexico, U.S. attorneys must either face serious danger traveling to meet their clients or attempt difficult remote representation. As of the end of August 2019, nearly 99 percent of MPP returnees did not have lawyers, making it unlikely that meritorious asylum cases will succeed in the U.S. asylum system.⁴⁹

STATEMENT OF THE LATIN AMERICAN WORKING GROUP

November 18, 2019.

Rep. BENNIE G. THOMPSON,
Chair, House Homeland Security Committee.

Rep. MIKE ROGERS,
Ranking Member, House Homeland Security Committee.

Rep. KATHLEEN RICE,
Chair,

Rep. CLAY HIGGINGS,
Ranking Member,
Border Security, Facilitation & Operations Subcommittee.

Re: LAWG Statement for Nov. 19th House Homeland Security Border Security, Facilitation & Operations Subcommittee Hearing, “Examining the Human Rights and Legal Implications of DHS’ Remain in Mexico Policy”

The Latin America Working Group (LAWG) hereby submits this statement for the record. LAWG advocates for just U.S. policies toward Latin America and the Caribbean. One of LAWG’s priority areas is to call for protections for migrants and refugees from Mexico and Central America and to ensure fair access to asylum at the U.S.-Mexico border and in the Latin American region. LAWG welcomes this oversight effort by the House Homeland Security Committee on the human rights and

⁴⁴ Gaby Del Valle, *Vice*, “Trump’s Remain in Mexico Policy Is Causing Asylum-Seekers to Miss Court Dates—and Get Deported,” Sept. 24, 2019, https://www.vice.com/en_us/article/gyzdp9/trumps-remain-in-mexico-policy-is-causing-asylum-seekers-to-miss-court-dates-and-get-deported.

⁴⁵ TRAC Immigration, Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings,” through Sept. 2019, <https://trac.syr.edu/phptools/immigration/mpp/> [last accessed Nov. 18, 2019].

⁴⁶ Philip Bump, *Washington Post*, “Most migration to the U.S. costs money. There’s a reason asylum doesn’t,” Apr. 30, 2019, <https://www.washingtonpost.com/politics/2019/04/30/most-migration-us-costs-money-theres-reason-asylum-doesnt/>.

⁴⁷ Jennifer Medina, *New York Times*, “Anyone Speak K’iche’ or Mam? Immigration Courts Overwhelmed by Indigenous Languages,” Mar. 19, 2019, <https://www.nytimes.com/2019/03/19/us/translators-border-wall-immigration.html>.

⁴⁸ TRAC Immigration, Transactional Records Access Clearinghouse, “Asylum Representation Rates Have Fallen Amid Rising Denial Rates,” Nov. 28, 2017, <https://trac.syr.edu/immigration/reports/491/>.

⁴⁹ TRAC Immigration, Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings,” through Sept. 2019, <https://trac.syr.edu/phptools/immigration/mpp/> [last accessed Nov. 18, 2019].

legal implications of the Department of Homeland Security (DHS)'s Remain in Mexico policy.

Through our on-going research on the human rights situation across Mexico, close collaboration and monitoring with civil society organizations along the U.S.-Mexico border and at Mexico's southern border, and through a November 2019 trip to the San Diego border region, LAWG has confirmed that the Remain in Mexico policy is returning asylum seekers, including pregnant women, unaccompanied children, and members of the LGBTQ+ population, to situations of extreme danger and exposing them to human rights violations. With over 55,000 asylum seekers returned to Mexico to date at 6 ports of entry along the border to wait throughout the duration of their U.S. asylum proceedings, we remain extremely concerned about the rapid implementation of this policy. We are also concerned about the establishment of secretive "tent courts" in Laredo and Brownsville, Texas to which the public has had no access and which present serious due process violations to asylum seekers. We urge the committee to expand its oversight efforts on this policy, including by conducting monitoring visits to the ports of entry and courtrooms where the policy is being implemented, and requesting information from DHS on the policy's implementation and funding. Moreover, we urge the committee to ask DHS to end the implementation of this policy immediately.

The Remain in Mexico policy is compounded by a series of other policies that the Trump administration has undertaken to shut the door to asylum seekers at the U.S.-Mexico border, including the illegal practice of metering, a recently enacted "Interim Final Rule" that bans all individuals who have traveled through another country first to reach the United States from receiving asylum with extremely limited exceptions, and the "Asylum Cooperation Agreements," or safe third-country agreements, signed between the United States and Guatemala, Honduras, and El Salvador which may forcibly return asylum seekers who have no previous connection to any of these countries or who many not even have transited through them to seek protections there. We urge the committee to also conduct oversight on these policies and their implementing guidance as it relates to the implementation of the Remain in Mexico policy.

There is sufficient evidence, including from the U.S. State Department and other sources, to demonstrate that asylum seekers are being returned to danger by being forced to wait in Mexico. Tijuana has seen a dramatic increase in the level of homicides for the last 5 years, reaching record levels in 2018, making it one of the deadliest cities in the world.¹ Total homicides in Ciudad Juárez for 2019 have already exceeded the total for 2018.² Mexico's northern border states, such as Tamaulipas, Coahuila, Nuevo Leon, and Chihuahua, also continue to rank among the states with the highest number of registered disappearances in the country.³ The U.S. State Department currently has travel warnings on all 6 of Mexico's northern border states, urging citizens not to travel to Tamaulipas, to reconsider travel to Coahuila, Chihuahua, Nuevo Leon, and Sonora, and to exercise increased caution in travel to Baja California, all due to high levels of violent crime.⁴ These states now encompass all 6 ports of entry where the policy is being implemented.

The violence perpetuated in these cities comes not only from organized crime but also from systemic corruption and abuses within Mexican law and migration enforcement agencies which at times work in collusion with criminal groups. Over 30 disappearances were attributed to the Mexican Navy, for example, in Nuevo Laredo, Tamaulipas in 2018.⁵ In addition, the 2017 U.S. State Department human rights country report on Mexico highlighted collusion between the state government of Coahuila and organized crime in carrying out disappearances.⁶ While the information above demonstrates a broader situation of violence, corruption, and impunity along some of Mexico's northern border states and cities, asylum seekers and mi-

¹ Kate Linthicum, "Meth and murder: A new kind of drug has made Tijuana one of the deadliest cities on Earth", January 30, 2019, <https://www.latimes.com/world/mexico-americas/la-fg-mexico-tijuana-drug-violence-20190130-htmstory.html>.

² <https://ficiosec.org/homicidios-dolosos-2019/>.

³ Lily Folkerts, Annie Gallivan, Latin America Working Group, Trouble for Turn Backs: Risks for Migrants in Mexico's Northern Border States, 2018, <https://www.laug.org/trouble-for-turn-backs-risks-for-migrants-in-mexicos-northern-border-states/>.

⁴ U.S. Department of State, Mexico International Travel Information, November 15, 2018, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-InformationPages/Mexico.html>.

⁵ Office of the U.N. High Commissioner for Human Rights, Zeid urges Mexico to act to end wave of disappearance in Nuevo Laredo, May 30, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23157&LangID=E>.

⁶ U.S. Department of State, Country Reports on Human Rights Practices for 2017, 2017, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

grants, in particular, have long faced human rights violations and crimes in their transit through Mexico. Civil society organizations and migrant shelters have documented multiple cases of torture, murder, disappearances, kidnappings, robbery, extortion, and sexual and gender-based violence that migrants and asylum seekers suffer at the hands of criminal groups in Mexico. The perpetrators of this persecution often act in collusion with Mexican migration and law enforcement. Multiple reports issued by U.S. and Mexican organizations and migrants shelters in Mexico illustrate that, while many crimes against migrants occur in the southern part of Mexico, migrants are victims of abuse throughout the country, including in northern border states.⁷ The Inter-American Commission on Human Rights (IACHR) has previously noted crimes against migrants in its reports and NGO's have noted the specific risks migrants face in each of Mexico's border states in documents submitted to the IACHR.⁸ As the MPP would force asylum seekers to wait in Mexico for prolonged periods of time, it is likely that more migrants would be exposed to such risks and violence, or would turn to smugglers to cross the border between ports of entry and in more precarious conditions.

Waiting in Mexico for months under this policy has particularly negative implications for the rights of families, women, children, and members of the LGBTQ+ population. In some cases, these situations have led to death for asylum seekers who have taken more dangerous border crossings after having grown frustrated by the wait and desperate by the lack of access to services while in Mexico. Such is the tragic case of the Salvadoran man Oscar and his daughter, Valeria, who were subject to the policy and who drowned crossing the Rio Grande.⁹

LGBTQ asylum seekers may have a specifically hard time gaining access to the already extremely limited housing, employment, health services available to asylum seekers in Mexico due to on-going xenophobia and discrimination specifically aimed at this population. There are already a limited number of civil society shelters available to asylum seekers on the Mexican side of the border and many may not have specific spaces in which LGBTQ+ asylum seekers can feel comfortable in. LGBTQ+ asylum seekers may not want to frequent shelters set up by local authorities for fear of discrimination by law enforcement officials, organized crime, or other migrants.

On a recent trip to San Diego, LAWG heard of a few cases of babies being born to women from Central America during the duration of their wait in Tijuana under this policy. As the Mexican constitution states that individuals born in Mexican territory are Mexicans, these children are Mexicans and should not be returned to Mexico under the Remain in Mexico policy. Yet it did not appear that either the U.S. or Mexican governments were taking any action to ensure that the children were not subjected to the policy, effectively leaving the children in a situation of near statelessness. There is no comprehensive information on the total number of children born to asylum seekers in the duration of their wait in Mexico under this policy. This is another concerning impact that the policy is having on families and pregnant women, by forcing them to wait for extended periods of time and thus exposing them to carry out their pregnancy and subsequent childbirth in conditions of serious risks along Mexico's northern border.

The policy has had secondary effects of returning asylum seekers as far south as Mexico's southern border due to the Mexican government's inability or unwillingness to protect asylum seekers in Mexico. Through its close collaboration with civil society organizations across Mexico, LAWG has come across at least 3 cases of families who were returned to Mexico under the policy and were bussed by the Mexican government to Mexico's southern border.¹⁰ In one case, an entire Honduran family of 2 adults and 3 children from Honduras were returned by Mexico's migration enforcement agency, INM, to the city of Tapachula along Mexico's southern border from

⁷ Red Migrante Sonora (RMS), Y la impunidad continúa. Segundo informe de la Red Migrante Sonora, June 2017, <https://www.kinoborderinitiative.org/wp-content/uploads/2017/12/Informe-RMS.pdf>, and José Knippen, Clay Boggs, and Maureen Meyer, An Uncertain Path, November 2015 https://www.wola.org/sites/default/files/An%20Uncertain%20Path__Nov2015.pdf.

⁸ Daniella Burgi-Palomino, Latin America Working Group (LAWG), Maureen Meyer, Washington Office on Latin America (WOLA), Joanna Williams, Kino Border Initiative, Situation of Impunity and Violence in Mexico's Northern Border Region, March 2017, <https://www.wola.org/wp-content/uploads/2017/04/Situation-of-Impunity-and-Violence-in-Mexico-northern-border-LAWG-WOLA-KBI.pdf> and Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS), The Human Rights Situation in Mexico, December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf>.

⁹ "The father and daughter who drowned at the border were desperate for a better life, family says," <https://wapo.st/2qO3ehb>.

¹⁰ Documentation or notification of cases provided to LAWG by staff from the Center for Human Rights Fray Matias de Cordova and the Jesuit Network for Migrants in Mexico between Sept. 2019 and Nov. 2019.

the U.S.-Mexico border. As the family was left to wait in Nuevo Laredo, Mexico under Remain in Mexico in August and had no network to turn to there for protection, they felt like they had no choice but to take a bus offered to them by the INM. They initially thought the bus was going to Mexico City but later realized it went to the city of Tapachula. There they were told the paperwork initially granted to them by INM along Mexico's northern border was invalid and they were held in a detention center. They were left with no way to return to their court hearing in early November 2019 in the United States and lacked information on how to pursue their case from Tapachula. They also feared being returned to Honduras by Mexican migration enforcement agents. While the Mexican government claims that these returns of asylum seekers under MPP are voluntary,¹¹ this example demonstrates that often families lack information about their rights, and the overall process under Remain in Mexico and face a false choice between waiting in danger along Mexico's northern border or moving elsewhere in Mexico where they might also have no protections. Thus, through the Remain in Mexico policy the U.S. Government is sending asylum seekers to face harm across Mexico and placing them in situations whereby the Mexican government could return them to their home country, in violation of non-refoulement under international refugee law.

Finally, the Remain in Mexico policy continues to present asylum seekers with serious due process violations, preventing asylum seekers from having their fair day in court and access to legal counsel. According to the latest TRAC statistics through the end of Sept. 2019, 98 percent of asylum seekers under MPP lack access to legal counsel.¹² The establishment of the tent courts in Laredo and Brownsville, Texas as of Sept. 2019 with judges videoconferencing into courtrooms to hear asylum cases present a serious due process violation for asylum seekers. Thus far the public has not had access to any of these hearings and asylum seekers must present themselves at 4:30 am at the ports of entry to attend their court hearings in the tent courts, which exposes them to serious risks along this part of the border.

When LAWG observed the Remain in Mexico court hearings in San Diego in early Nov. 2019 we noted similar trends. Almost the entire immigration court was dedicated to holding only Remain in Mexico hearings given the high volume of cases in this sector of the border. Only about 10 percent of individuals presenting cases had a lawyer accompanying them. Many individuals referred to having been informed that they had to pay up to \$8,000 for a lawyer. Even if some individuals had managed to prepare their asylum application with the support of NGO's on the Mexican side of the border, they still lacked general information on the whole process, their applications were often not complete, and they were not accompanied by a lawyer in court. Often they only managed to begin their asylum applications and find support from some organizations months after their arrival and after several initial hearing dates. Individuals in the court hearings observed were never asked if they feared returning to Mexico. The general process observed in the court itself seemed like it was meant to dissuade asylum seekers from continuing the process. Similar to what occurs in many ports of entry where Remain in Mexico is being implemented, individuals have to present themselves at 4:30 am at the port of entry for a 9 am court hearing sessions and at 9 am for a 1 pm session. Upon arrival to the courts, it takes hours for the judges to hear all of the MPP cases so that asylum seekers are returned together to the port of entry at least 3 hours later, all just to come back in months. Most of the cases observed received hearing dates to return in early 2020 after having begun the process between July and September 2019.

Even in such a short period, many serious issues with due process violations were observed because of the Remain in Mexico policy. Congressional oversight is urgently needed moving forward.

STATEMENT OF KRISH O'MARA VIGNARAJAH, LIRS

TUESDAY, NOVEMBER 19, 2019

I. INTRODUCTION

As a faith-based organization with 80 years of experience providing the long welcome to refugees fleeing inescapable violence from conflict and persecution in their home countries, LIRS is deeply concerned with the numerous attempts by the ad-

¹¹ LA Times, Oct. 2019, Buses to Nowhere: Mexico Transports Migrants with U.S. Court Dates far South, <https://www.latimes.com/world-nation/story/2019-10-15/buses-to-nowhere-mexico-transport-migrants-with-u-s-court-dates-to-its-far-south>.

¹² Details on MPP (Remain in Mexico) Deportation Proceedings, TRAC Immigration, <https://bit.ly/2OmU5V9>.

ministration to end asylum and the devastating human cost that its policies are having on the vulnerable populations that we serve. For over 20 years, LIRS has provided caring homes and trauma informed services to unaccompanied children. We vehemently oppose the Remain in Mexico policy because it deliberately jeopardizes the health, safety, and well-being of children and their families.

We appreciate the House Homeland Security Subcommittee on Border Security, Facilitation and Operations, for holding this critical hearing, “Examining the Human Rights and Legal Implications of DHS ‘Remain in Mexico Policy.’” And we thank you for the opportunity to submit this statement for the record in which we share our expertise and experience working with refugees and children to relay our concerns and recommendations with respect to the Migrant Protection Protocols (MPP) or “Remain in Mexico” policy.

80 Years of Welcoming the Stranger: LIRS Expertise and Experience

2019 marks LIRS’s 80th anniversary of working with refugees who have fled persecution and were brought to the United States either through the refugee admissions program or through our Southern Border. Our devoted National network of affiliates provide a range of services, such as: Providing unaccompanied children transitional foster care in small congregate home-like environments, family reunification services, respite and welcome, offering legal information and support to migrants so that they understand their legal rights and obligations throughout their immigration court proceedings and integration services so that migrants are empowered with the ability to manage their finances, secure employment, and other services that help migrants successfully adjust to their new home country.

Our policy, child welfare, and refugee expertise and presence across the Nation means that LIRS has an expansive view and first-hand knowledge of the impact of immigration policies at the border and beyond. For instance, prior to the formal announcement of the “Zero Tolerance Policy” by former Attorney General Sessions in May 2018, LIRS was aware of a change in policy because our foster care program recognized an atypical increase in unaccompanied children.

During the height of the family separation crisis, LIRS and United States Conference of Catholic Bishops (USCCB), were the only organizations called upon by the Government to assist with family reunification efforts.¹ Without hesitation, LIRS agreed to assist. To facilitate speedy reunifications, LIRS raised funds, provided respite and welcome, and worked day and night to reunite children with parents detained across the country. At no time during or after our reunification efforts did we receive financial compensation from the Government.

In this statement for the record, LIRS provides analysis of the reasons why we are concerned with: (1) The administration’s attempt to end asylum; (2) children and their families being returned to Mexico; and (3) the on-going due process violations. Having played a major role in the family separation crisis, LIRS recognizes that Remain in Mexico places children in harm’s way unnecessarily and is being implemented prior to protocols being put in place to ensure that asylum seekers humanitarian and legal protections are safeguarded. Overall, we seek the immediate termination of the policy.

II. EFFORTS TO END ASYLUM: IMPACT ON CHILDREN

LIRS objects to the varying ways that the administration has been attempting to hermetically seal the Southern Border through physical and invisible walls, in breach of domestic and international laws. We serve many refugees and unaccompanied children from the Northern Triangle (Guatemala, Honduras, El Salvador) where gang, domestic, and other forms of violence from non-state and state actors makes it impossible for them to stay. Having worked with refugees and asylum seekers, LIRS knows that individuals and families that flee their home country to seek asylum in America do so as a life-saving measure of last resort.

We are disheartened to hear and object to Border Patrol officers hastily dismissing individuals claims of fear of return to Mexico. As it is currently being implemented, the Remain in Mexico program treats asylum seekers as criminals, when in fact and in accordance with U.S. and international law, seeking asylum is lawful.

Remain in Mexico, officially referred to as Migrant Protection Protocols (MPP) is not the only policy that the administration has created to end asylum. In addition to MPP there is the informal policy of metering, third-country transit ban and the

¹The United States Council of Catholic Bishops/Migration and Refugee Service and Lutheran Immigration and Refugee Service. 2018. “Serving Separated and Reunited Families: Lessons Learned and the Way Forward to Promote Family Unity.” Available online at: https://www.lirs.org/wp-content/uploads/2018/10/Serving-Separated-and-Reunited-Families_Final-Report-10.16.18-updated.pdf.

end to so-called, “catch and release”. Individually and collectively these policies are designed by the administration to discourage and force refugees from seeking asylum in American.

LIRS calls for the Government to adopt a more humane and compassionate approach to trauma-inflicted asylees and calls on the Government to stop its policies that deny refugees their legal rights. After all, seeking asylum is not only a legal right; it is inextricably tied to life-death consequences.

Asylum Policies are Harmful to Unaccompanied Children and Violate Due Process

Published as an interim final rule in the *Federal Register*, allowing the rule to go into effect immediately without public comment on July 16, 2019, the third-country transit ban effectively ends asylum. The rule stipulates that Border Patrol Agents can turn away asylum seekers at the border if they have not applied for asylum in another country.² This policy was initially blocked by a Federal judge, but the Supreme Court reversed this decision, allowing the policy to continue while being challenged in court.³

There are many concerns that LIRS has with respect to how the administration is implementing the Remain in Mexico and Third-Country Transit ban policies, 2 interrelated concerns are: (1) The impact on unaccompanied children; (2) the absence of DHS and DOJ policy guidance with respect to how the Remain in Mexico policy and the third-country transit ban are going to be implemented.

In the first instance, LIRS is concerned by the fact that the third-country transit ban on asylum does not include an exemption for unaccompanied children. As CLINIC explains, “any unaccompanied child arriving at the Southern Border will be barred from asylum unless they meet the severe trafficking exception or have applied for and been denied asylum in a third country in transit to the United States.”⁴ Sending children back to their home countries is like a death sentence.

“Central American youth are 10 times more likely to be killed when compared to children in the United States as they become victims to gangs, state security forces, and organized crime. Gangs especially seek out young recruits, as they can more discreetly smuggle drugs and weapons, or collect extortion payments.”⁵

Second, we are deeply disturbed by the fact that immigration judges and officials have not received clear guidance as to how to implement both policies. As the new rule is written, anyone who seeks to enter and apply for asylum on or after the rule took effect on July 16, 2019, will be barred from seeking asylum unless they applied in another country. The complication, as ProPublica explains is that, “the asylum ban applies to migrants who “enter” the United States after July 16. Technically, a migrant who has already come to the United States to ask for asylum, been sent to Mexico to wait, and comes back into the United States to attend his or her court date is “entering” again. The text of the regulation isn’t clear about whether the ban only applies to a first entry, or to any entry into the United States after that date.”⁶

When the rule took effect, DHS stated that the new rule would not apply to immigrants who were part of MPP and were returning to the United States for their court hearings, however, DHS and DOJ have failed to create policy guidance for immigration judges to follow. In cases that ProPublica has tracked, it has found that Judges and prosecutors have been given free reign to interpret the regulation.⁷ Moreover, “according to data from TRAC, 99 percent of asylum seekers sent to wait in Mexico don’t have lawyers. The final hearings for unrepresented Remain in Mexico returnees are typically closed to the public. That makes it impossible to know how many other asylum seekers are currently waiting in limbo for Herbert’s deci-

²Asylum Eligibility and Procedural Modifications (“Third-Country Transit Ban”). July 16, 2019. *Federal Register*. Available on-line at: <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>.

³Jonathan Blitzer, October 3, 2019. “Does Asylum Have a Future at the Southern Border?” *The New Yorker Online*, available on-line at: <https://www.newyorker.com/news/daily-comment/does-asylum-have-a-future-at-the-southern-border>.

⁴Asylum Ban Part 2: Third-Country Transit Regulations FAQs. CLINIC. Available on-line at: <https://cliniclegal.org/resources/asylum-ban-part-2-third-country-transit-regulations-faqs>.

⁵Tamaryn Nelson and Hajar Habbach. “If I went back, I would not survive.” Asylum Seekers Fleeing Violence in Mexico and Central America. *Physicians for Human Rights*. Pg. 6. Available on-line at: <https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america/>.

⁶Dara Lind. October 22, 2019. “Trump’s Asylum Ban Could Apply Retroactively to Thousands of Migrants Even Though Officials Promised it Wouldn’t.” ProPublica. Available on-line at: <https://www.propublica.org/article/trumps-asylum-ban-could-apply-retroactively-to-thousands-of-migrants-even-though-officials-promised-it-wouldnt>.

⁷Id.

sion⁸—or whether any have already been denied asylum by another judge, due to a ban they were told they were exempt from.”⁹

It is irresponsible that there is no clarity on whether the third-country transit ban will apply retroactively to individuals who are part of MPP. Moreover, LIRS is adamantly opposed to sending unaccompanied children back to their home countries, as the practice seems to be given our sources on the ground. Children are highly vulnerable, which is why they leave, and by returning them back to their home countries they will be revictimized. We cannot turn our backs and allow our Government to deliberately jeopardize the safety of unaccompanied children. We are a Nation that is better than this.

Remain in Mexico Impacts All of Us

It is a misnomer to believe that Remain in Mexico impacts “others”, it impacts us all. Equally disturbing is the threat that Remain in Mexico policy has with respect to sending vulnerable populations to the already crime-ridden, violent-prone fragile border towns across the U.S.-Mexico border. Essentially, the build-up of vulnerable, homeless individuals at the border has extended an invitation to smugglers and criminal gangs whose numbers we can expect to grow. Therefore, until the Remain in Mexico policy is ended and asylum seekers are permitted to pursue their asylum claims in the United States, we have a ticking time bomb that threatens our National security at the border.

III. TURNING OUR BACKS: HOW “REMAIN IN MEXICO” ABANDONS THE HUMAN RIGHTS OF THOUSANDS OF CHILDREN, FAMILIES, AND VULNERABLE POPULATIONS

The Remain in Mexico policy ostensibly excludes unaccompanied children and vulnerable populations, however, LIRS believes that these standards do not go far enough, and we are extremely concerned by the fact that thousands of children, hundreds of toddlers and babies have been returned to Mexico.¹⁰ Of equal concern to LIRS are reports that the vulnerable populations that purportedly should not be returned to Mexico, such as, pregnant women and refugees with medical ailments, have been returned.¹¹

On October 11, 2019, Reuters News was the first to report the following data collected by the Executive Office Immigration Review (EOIR) on children returned to Mexico since January 2019:

- 16,000 children under 18 years of age
- 4,300 children under 5 years of age
- 481 toddlers
- 500 infants.¹²

To put the data in perspective, as of October 3, 2019, one-third of the 50,000 immigrants who were returned to Mexico were children.¹³ While the sheer volume of children that have been sent to Mexico is disturbing, LIRS is appalled by the dangerous and unhygienic living conditions that children are subjected to while having to wait for their immigration court hearings, which can take weeks to months. Doctors from Physicians for Human Rights have met children with Post Traumatic Stress Disorder (PTSD) and have been able to collaborate asylum claims while spending time with children and families in Mexico.¹⁴ LIRS finds the casual disregard for child endangerment by the administration deplorable and we encourage Congress to conduct more oversight and investigate the plight of children returned to Mexico and urge DHS to end the policy.

⁸“Herbert” refers to Immigration Judge Herbert who has presided over hearings on Remain in Mexico.

⁹Lind supra note 6.

¹⁰Gustavo Solis. October 14, 2019. “Remain in Mexico: Migrants Who May not be Subject to Policy Continue to End up in Mexico,” The San Diego Union-Tribune. Available on-line at: <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-10-14/remain-in-mexico-migrants-who-should-not-be-subject-to-policy-continue-to-end-up-in-mexico>. Remain in Mexico permits CBP agents to return children who arrive with their parents at the Southern Border to Mexico.

¹¹Id.

¹²Kristina Cooke, Mica Rosenberg, and Reade Levinson. October 11, 2019. “Exclusive: U.S. Migrant Policy Sends Thousands of Children, Including Babies, Back to Mexico” Reuters News On-line: <https://www.reuters.com/article/us-usa-immigration-babies-exclusive/exclusive-u-s-migrant-policy-sends-thousands-of-children-including-babies-back-to-mexico-idUSKBN1WQ1H1>.

¹³Id.

¹⁴Nelson and Habbach, Physicians for Human Rights supra note 5.

LIRS demands more protections for children returned to Mexico

As it is currently being implemented, the “Remain in Mexico” policy is harmful to children in that it:

- Exposes them to actual and threats of violence,
- Increases their likelihood of catching life-threatening illness,
- Denies them educational opportunities,
- Compounds the trauma that they have experienced in their home country, and
- Fails to ensure that children’s basic needs are met like clean water, food, and shelter.

LIRS is of the opinion that time is of the essence and that the Government must take immediate action by ending the Remain in Mexico policy. We should not wait until a child dies to take action. It is a well-established fact that Mexico is notoriously dangerous and the level of violence has increased in tandem with the Remain in Mexico policy.

As an expert in trauma, LIRS is also very concerned about the trauma that Remain in Mexico inflicts on children which will most certainly have life-long consequences. Our concerns are reinforced by doctors from Physicians for Human Rights who met with children and their families in Mexico and found that: “2 out of the 3 children interviewed reported symptoms of PTSD, and 1 boy also showed signs of anxiety disorder and somatization, whereby psychological distress manifests as physical ailments and attention problems.”¹⁵

Additionally, there is no public medical care available in Mexico which is disturbing considering that many children are living in overly crowded shelters and/or tents where infections and diseases can easily spread.¹⁶ Indeed, “[d]octors and nurses visiting shelters and camps in Mexican border towns, . . . told Reuters they have seen cases of chicken pox, scabies, respiratory infections, skin rashes, eye infections, and gastrointestinal issues among children and adults.”¹⁷ Furthermore, the U.S. Centers for Disease Control finds that “children under 5, and especially under the age of 2, are at high risk of serious flu complications, . . . and the flu season is about to start.”¹⁸

What qualifies as a medical exemption under Remain in Mexico is unclear, yet it is critical that DHS make public and/or establishes a protocol for making these determinations in order to ensure that children and other vulnerable populations are not subjected to unnecessary health risks. The plight of Jennifer Jimenez, an El Salvadoran mother that Reuters interviewed, highlights the urgent need for standards to be put in place:

“Jennifer Jimenez, a 30-year-old Salvadoran, said she arrived at the border in July with 11-year-old twins and her 8-month-old son Jacob, who was born with lungs that had not fully developed.

“Although she explained Jacob’s condition to border agents, she said, the agents sent her and her children back to Ciudad Juárez, where the family ended up sleeping on the floor of a crowded shelter.

“Recently she managed to find a doctor who noted in Jacob’s medical records—seen by Reuters—that living in the shelter had complicated his health care. U.S. officials recently admitted the family to stay with relatives in the United States, a rare occurrence.”¹⁹

The basic human rights needs of children are not being met and LIRS urges the Government to stop turning its back on children and/or do more to empower Mexican authorities to provide access to education, health care, shelter so that children do not have to suffer another day.

IV. DUE PROCESS IS NOT FOR SOME, IT IS FOR ALL

Syracuse University conducted a review of immigration court records from January 2019 to the end of June 2019 and reports that its researchers found that a mere 1.2 percent of refugees enrolled in the Remain in Mexico program had legal representation or 14 out of the 1,155 14 decided cases.²⁰ LIRS believes that this is unacceptable, along with other clear violations of due process that have been occurring since the Remain in Mexico policy was launched at the end of January 2019. Some

¹⁵Id. at pg. 2–3.

¹⁶Id. at pg. 36.

¹⁷Cooke, Rosenberg, and Levinson *supra* note 12.

¹⁸Id.

¹⁹Id.

²⁰“Access to Attorneys Difficult for Those Required to Remain in Mexico,” July 29, 2019. TRAC Immigration, Syracuse University. Available on-line at: <https://trac.syr.edu/immigration/reports/568/>.

of the violations are prescribed by the policy, such as, requiring refugees to affirmatively state to CBP officers that they fear returning to Mexico and providing English-language only immigration documents that instruct refugees to fill out in English. Other violations that have been reported include: CBP officers providing inaccurate Notices to Appear (NTA) and conducting hearings in secretive tent courts.

The Remain in Mexico policy imposes higher standards of proof during credible fear interviews and asks refugees to affirmatively state that they fear return to Mexico. Under the higher burden of proof refugees must meet, “reasonable fear standard”, sets a high bar that is nearly impossible for refugees to meet. To meet this legal standard, refugees would have to provide documentation to support their asylum claims at the border.

It is general knowledge that refugees flee in haste and with only the clothes on their back. Therefore, the typical burden of proof standard that asylum seekers must meet at the border is referred to as ‘credible fear’. Under this standard, as long as refugees’ asylum claims are deemed credible they are allowed to enter the United States until the conclusion of their immigration court proceedings. This standard is fairer than then one being applied under MPP in that it does not require asylum seekers to present documentation and other evidence of their persecution.

The MPP policy also places the onus on refugees to affirmatively state that they have a fear of return to Mexico. This requirement is problematic in two main ways. First, it expects that refugees understand the MPP policy and then places the burden on refugees to affirmatively express their fear to border officials. Considering that most immigration attorneys and Government officials do not fully comprehend MPP, asking refugees to understand it is absurd. Furthermore, the overwhelming majority of refugees do not have access to legal counsel.

Second, when refugees have expressed to border officials that they fear return to Mexico, instead of following the policy protocol—which requires border agents referring refugees who express fear to USCIS Asylum Officers—border officials have instead, returned individuals to Mexico where they have been met by violence, threats of violence, kidnapping, and extortion.

According to a draft DHS report obtained by BuzzFeed News:

“At some locations, CBP uses a pre-screening process that preempts or prevents a role for USCIS to make its determination. Interviewees also indicated that some CBP officials pressure USCIS to arrive at negative outcomes when interviewing migrants on their claim of fear of persecution or torture.”²¹

At the very least, border officials should notify Mexican authorities of refugees expressed concerns of fear of return, however this has not occurred. Instead, our Government is turning its back to the dire human consequences and human rights violations that are directly linked to the malfeasance of border officials and ill-conceived policies.

DHS has implemented the Remain in Mexico policy without establishing operating procedures to track and communicate with refugees who have been returned to Mexico. This is highly problematic when taking into account that numerous reports have revealed that DHS has been providing Notices to Appear (NTA) that contain inaccurate court dates and information and/or have sent NTA’s to shelters in Mexico where they are no longer staying.²²

DHS officials found that some immigrants have had to give up their shelter space in Mexico when they depart for the United States for a court hearing and are then left without an address to follow up on their cases. The officials recommend CBP create a “reliable method of communication” so immigrants can be reached during their wait. This will allow, they said, access to counsel and communication between migrant families—including cases when family members were not processed at the same time or when children are separated.²³

DHS began to hold MPP Hearings in Tent courts along the Southern Border in September 2019. One of the major problems LIRS has with the tent courts is that hearings are conducted in secrecy. It is never a good sign when attorneys and other

²¹Hamed Aleaziz, November 15, 2019. “U.S. Border Officials Pressured Asylum Officers to Deny Entry to Immigrants Seeking Protection, A Report Finds,” BuzzFeed News. Available on-line at: <https://www.buzzfeednews.com/article/hamedaleaziz/dhs-asylum-report-mpp-immigration-remain-mexico>.

²²Tom K. Wong, October 29, 2019. “Seeking Asylum: Part 2,” UC San Diego, U.S. Immigration Policy Center. Available on-line at: <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

²³Aleaziz supra note 21.

observers are denied access to courtrooms. Conducting secretive hearings may be permissible when National security is at stake, however, this is not the case as asylum seekers are not National security threats. Therefore, the use of secretive tent courts is clearly an unacceptable and unnecessary due process violation.

In the DHS draft report obtained by BuzzFeed News, DHS officials back up the due process concerns that have been expressed by refugees, immigration advocates and academics and officials have put forward the following recommendation asking:

“agencies within DHS, including CBP, to provide immigration court hearing notices in multiple languages, improve language access for immigrants and ensure that they understand the ‘questions asked and can make informed decisions,’ standardize procedures for screening vulnerable populations like children and people with disabilities, and clarify the role of CBP officers in the process.”²⁴

V. LIRS RETROSPECTIVE LOOK AT SIMILARITIES BETWEEN ZERO TOLERANCE AND REMAIN IN MEXICO AND OFFERS RECOMMENDATIONS

“The big takeaway from it is that MPP is not working,” said a former DHS official.²⁵ Albeit, much remains unknown, but what is known about the human rights and due process violations that have been occurring since the launch of Remain in Mexico on children and families is deeply disturbing. LIRS topline recommendation is for the Remain in Mexico to end immediately and that our asylum system is restored.

Applying Key Lessons Learned from Zero Tolerance to Remain in Mexico

In many respects, the latest assaults on asylum seekers is reminiscent of “zero tolerance policy” and for this reason, LIRS is extremely concerned with allowing Remain in Mexico policy to continue.

Remain in Mexico like zero tolerance policy has been justified by the administration through legal gymnastics, or the twisting and interpreting of immigration law to suit its deterrence approach to immigration.

Similar to the “zero tolerance policy”, Remain in Mexico lacks transparency and accountability mechanisms for holding Government agencies and the Mexican government accountable for their actions. For instance, DHS has failed to instruct immigration judges, Asylum Officers Customs and Border Patrol agents, and immigration attorneys on how to implement the policy and how the policy relates to metering and the third-country transit ban. Moreover, Mexico’s role and obligations under the policy are unclear.

Remain in Mexico policy has been implemented without taking into account the innumerable human rights violations that it creates, particularly for children, families, and vulnerable populations.

From what we know, the Remain in Mexico policy appears to be another ill-conceived and misguided policy with far-reaching human and legal impacts. This begs the question, have any lessons been learned? Considering that our Nation is still attempting to reunify children and remedy the chaos and human rights and legal impacts from “zero tolerance policy,” which the OIG and Government officials have confirmed to be an ill-conceived policy with far reaching human costs that continue to amount, followed by Remain in Mexico, the answer appears to be, no.

LIRS RECOMMENDATIONS

LIRS finds that the administration’s deterrence approach to asylum is the anthesis to our asylum legal and moral obligations. Given that Mexico border cities are notoriously dangerous and migrants in the MPP program have indeed been threatened, subjected to violent attacks, targeted for extortion and kidnapping, more needs to be done with ensuring that the individuals we send to Mexico are not place in harms way. The harm that migrants are experiencing was predictable and although the administration is turning its back on vulnerable populations and the law, LIRS cannot, and we recommend the following:

1. Immediate end to Migrant Protection Protocols and a restoration of our asylum system.
2. Increased Congressional oversight and investigations at the border to assess the human rights and due process violations.
3. Congressional Hearings that Address the Impact of Asylum Policies on Children and Families.
4. DHS should be prevented from denying child welfare and immigration advocates and attorneys full access to observe and intervene in MPP interviews.

²⁴ Id.

²⁵ Id.

5. Children, families, and other vulnerable populations must not be returned to Mexico.
6. DHS must cease implementing MPP until it establishes a method for tracking and communicating with migrants who have been returned to Mexico.
7. Until MPP ends and/or litigation prevents it from being implemented, at minimum, LIRS would like to see the following measures put in place at the border:
 - Access to legal counsel and/or legal advocates made available to asylees so that they can be informed of U.S. law and have assistance with preparing asylum cases;
 - An immediate end to interviews conducted by Customs and Border Patrol agents. Asylum Officers should be the only Government official tasked with conducting credible fear interviews;
 - Full transparency for MPP trials and an end to tent courts.
8. More transparency with respect to the Remain in Mexico Policy and the interplay between asylum policies at the border. In this regard, DHS must:
 - Make public the criteria it uses for determining who qualifies for a medical exemption under MPP.
 - Clearly define and make public CPB and Asylum Officer's roles with respect to conducting credible fear interviews and implementing MPP.
 - Clearly define and make public the protocol and procedures provided to CBP agents for implementing MPP and the third-country transit ban.
 - Clearly define and make public the protocols and procedures provided to immigration judges conducting MPP trials.
 - Make public the agreement between U.S.-Mexico on implementing Remain in Mexico and any subsequent amendments to the agreement.

STATEMENT OF THE MEXICAN AMERICAN LEGISLATIVE CAUCUS (MALC) OF THE TEXAS
HOUSE OF REPRESENTATIVES

TUESDAY, NOVEMBER 19, 2019

Asylum is a legal process under U.S. and international law through which individuals with an imminent fear of violence or persecution can ask for protection in another country. Current asylum laws in the United States were enacted as a response to the genocides of the Holocaust and represent the best of America's values as a "land of opportunity". The legal right to seek asylum is being limited, however, by current efforts under the Trump administration. Migrant Protection Protocols (MPP), otherwise known as the "Remain in Mexico" policy, betray the core value of asylum: To provide safety and due process to the most vulnerable international migrants.

Though the Department of Homeland Security (DHS) concedes that MPP should not apply to individuals who demonstrate a reasonable fear of harm while in Mexico, fewer than 1,000 of the over 55,000 migrants placed in the Remain in Mexico program have been allowed to remain in the United States while pursuing their cases, despite the overwhelming and ever-present dangers targeting migrants in Northern Mexico.¹ Migrants forced to remain in Mexico face violence, kidnappings, and threats to life, health, and well-being. One study found that between 21 percent and 24 percent of migrants in the "Remain in Mexico" program report receiving threats of violence while in Mexico and, of those, over 50 percent report that the threats turned into actual violence, including beatings, robbery, and extortion.² Since cities in Northern Mexico ran out of shelter space long ago, thousands of migrants live on the streets in encampments without regular access to food, potable water, or sanitation facilities.

Additionally, placing asylum seekers in Mexico—at a great distance from the vast majority of immigration attorneys—undermines the ability to guarantee that MPP complies with a person's 6th or 14th Amendment rights to due process. Even though migrants with representation are 4 times more likely to be released from detention and 11 times more likely to seek asylum than those without counsel, approximately

¹ See Dept of Homeland Sec., Assessment of the Migrant Protection Protocols (MPP), https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf ("As of October 15, 2019, USCIS completed over 7,400 screenings to assess a fear of return to Mexico. . . . Of those, approximately 13 percent have received positive determinations").

² HUMAN RIGHTS WATCH, "WE CAN'T HELP YOU HERE": U.S. RETURNS OF ASYLUM SEEKERS TO MEXICO 18–20 (2019).

98 percent of the 47,313 asylum seekers in the Remain in Mexico program were unrepresented as of September 2019.³

MPP places asylum seekers in great danger, violates due process and international legal obligations, and operates with surgical precision to ensure that Spanish-speaking asylum seekers will almost never be granted humanitarian relief and protection from the violence they are fleeing. For that reason, the Mexican American Legislative Caucus respectfully requests that the U.S. Congress take action to oversee, investigate, and introduce measures to end this unprecedented policy that undermines domestic and international legal protections for asylum seekers.

If you have any questions about the content of this statement please contact Irma Reyes[.]

STATEMENT OF THE NATIONAL IMMIGRANT JUSTICE CENTER (NIJC)

NOVEMBER 19, 2019

The United States has a moral and legal obligation to administer asylum laws properly. Over the course of the last 3 years, the administration has gone to extreme measures to violate the rights of asylum seekers; to not only turn away those in need, but to vilify and mistreat them in inhumane ways.¹ The perversely named “Migrant Protection Protocols” (MPP), also known as the “Remain in Mexico” policy, is the latest iteration of these efforts to dismantle the U.S. asylum system.² Rather than protect, this program does the opposite—it sends asylum-seeking families back to Mexico to await their proceedings where they have no support, no place to live, and are regularly extorted, kidnapped, threatened, and attacked by cartels and other criminal groups. The Mexican government is unable to control violence against migrants and is sometimes complicit or even involved in the harm.³ A recent survey of more than 600 asylum seekers subject to MPP found that 9 out of 10 respondents expressed fear of being returned to Mexico.⁴ Since the program was implemented in January 2019, it has impacted an estimated 50,000 asylum seekers.⁵ The well-documented risk of violence to individuals forced to remain in Mexico, coupled with the geographic and technological challenges of securing counsel while outside the United States, has resulted in a mere 1 percent of Remain in Mexico asylum seekers finding attorneys to represent them before the immigration court.⁶

NIJC’s Observations and Experiences with the Remain in Mexico Policy in Laredo, Texas.—In Laredo, Texas, NIJC has represented asylum seekers and observed Remain in Mexico hearings since the launch of that “court” in September 2019. The Laredo tent facility is a series of tents and shipping container-sized trailers erected on the northern bank of the Rio Grande, surrounded by barbed wire and guarded by agents with guns.⁷ Traumatized, desperate, beleaguered asylum seekers are required to line up at the bridge in Nuevo Laredo, Mexico, at 4:30 a.m. in order to be let into the United States for their hearings. Most sleep on the bridge the night before their hearings, because traveling through Nuevo Laredo in the middle of the night and early morning is too dangerous. After they are escorted from the bridge into the tent facility, the asylum seekers wait in a freezing cold room for hours until their hearings begin around 8:30 a.m.

³Details on MPP (Remain in Mexico) Deportation Proceedings, TRAC IMMIGRATION (Sep. 2019), <https://trac.syr.edu/phptools/immigration/mpp/> (follow these steps: check “Measure” as “Current Status,” check “Graph Time Scale” as “by Month and Year,” select “Hearing Location” on left-most drop-down menu; select “Represented” on center drop-down menu; check “Represented” on right-most drop-down menu).

¹HUMAN RIGHTS WATCH, “We Can’t Help You Here”—US Returns of Asylum Seekers to Mexico, July 02, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

²U.S. DEPARTMENT OF HOMELAND SECURITY, *Migrant Protection Protocols*, Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

³“We Can’t Help You Here”—US Returns of Asylum Seekers to Mexico, *supra* note 1.

⁴Tom Wong and Vanessa Cecena, *Seeking Asylum: Part 2*, Oct. 29, 2019, US IMMIGRATION POLICY CENTER <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

⁵Juan Aguilar, *Trump’s Controversial “Remain in Mexico” Immigration Policy Expands Along Texas’ Southern Border*, TEXAS TRIBUNE, Oct. 28, 2018, <https://www.texastribune.org/2019/10/28/trump-remain-mexico-immigration-policy-expands-texas-mexico-border/>.

⁶TRAC IMMIGRATION, *Access to Attorneys Difficult for Those Required to Remain in Mexico*, July 29, 2019, <https://trac.syr.edu/immigration/reports/568/>.

⁷Cedar Attansiao, *Tent Courts Set to Open on Border for US Asylum Seekers*, SAN DIEGO UNION-TRIBUNE, Sept. 10, 2019, <https://www.sandiegouniontribune.com/news/nation-world/sns-bc-us-immigration-tent-courts-20190911-story.html>.

Once called to speak in court, asylum seekers attempt to explain why they cannot return to their home countries to judges and Government prosecutors who appear by video teleconference from a courtroom hundreds of miles away. In the room where the initial hearings are held, there are typically around 25 or more men, women, and children waiting to see the judge, nearly all of whom do not have lawyers. They sit on the opposite side of the courtroom from any attorneys who are present and the attorneys are not allowed to talk to them. Their belts and shoelaces have been taken from them. Their eyes are bloodshot from exhaustion and, to a person, they look confused and afraid. Their children—and there are many children—sleep in their arms. When the asylum seekers express their fear of returning to Mexico or ask questions about being forced to remain in Mexico, the judges frequently get agitated and hurry along the proceedings or shrug in defeat, reporting they have no power to order people out of the Remain in Mexico process.

Below are 6 examples of what NIJC attorneys have witnessed in the Laredo tent facilities and through speaking with asylum seekers who are subject to the Remain in Mexico policy in Nuevo Laredo:

- NIJC met an asylum seeker who travelled with a family member by bus from another part of Mexico to Nuevo Laredo for their hearings under the Remain in Mexico policy. As one family member disembarked, he was forced into a vehicle by waiting cartels and kidnapped. The other family member managed to escape and, despite this terrifying experience, waited at the bridge to attend her hearing in Laredo, Texas, the next day. At the hearing, the remaining family member described the attack and kidnapping to the judge to explain why her family member was unable to attend his hearing. Despite her eyewitness testimony about the kidnapping, the U.S. Government attorney argued strenuously that the missing family member be ordered deported for failing to appear.
- NIJC attorneys participated in the representation of a Cuban political dissident who slept on the bridge the night before his asylum trial. He reported that though the sheltered area where he slept was overseen by Mexican border officials, Mexican cartel members came into the space at will and kidnapped people from the shelter.
- Following this Cuban man's asylum hearing, the immigration judge indicated he was inclined to grant protection. Despite the strength of the claim, the Government lawyer indicated she would reserve appeal, which meant the judge was required to adjourn the proceeding in order to write a lengthy decision to be issued by mail. The judge declined to set the asylum seeker for another hearing, which should have meant that he could not be returned to Mexico while waiting for the decision because only individuals who are scheduled for future hearings are to be accepted back into Mexico. To side-step this procedural obstacle, the Department of Homeland Security issued a hearing notice with a fake hearing date, which resulted in the asylum seeker being returned to Mexico.
- NIJC attorneys participated in the representation of a large Central American family. While more than a dozen members of the family were allowed entry into the United States to seek asylum after passing credible fear interviews, 4 family members who arrived later were subjected to the Remain in Mexico policy and returned to Nuevo Laredo. Because all of the family members present asylum claims that arise from the same nucleus of facts and rely on the same evidence, their attorneys requested that Immigration and Customs Enforcement (ICE) agree to consolidate the proceedings of all family members and parole the 4 family members in Mexico into the United States. ICE refused, thus requiring that separate judges on separate dates hear the nearly identical cases. Moreover, while subject to Remain in Mexico, the 4 family members in Mexico were threatened by cartels and evicted from the hotel in Nuevo Laredo where they had been staying.
- NIJC attorneys observed the sham nonrefoulement process in Laredo. Asylum seekers subject to the Remain in Mexico policy may request exemption from the program if they establish they face harm in Mexico on account of a protected characteristic. A gay, HIV-positive Central American man requested a non-refoulement interview after he was persecuted in Mexico and denied access to the life-saving medications he needs. His attorneys provided him with country conditions documents and a written legal argument in support of his claim. The officer who administered the non-refoulement interview by telephone refused to review his evidence, spoke with him for approximately 20 minutes, and summarily returned him to Mexico without an explanation for the denial.
- While tent facility hearings are supposed to be no different from hearings in brick-and-mortar immigration courts across the country, authority and control over the hearing process differs dramatically. ICE officials—not immigration judges—control access and operations. When attorneys request access to cell

phones or to hearing spaces large enough to accommodate legal teams, ICE officials determine the outcome of the requests. ICE officials decide whether attorneys may meet with their clients after court and for how long. ICE officials decide whether attorneys may bring interpreters to meet with their clients and assist with communication during court hearings. The reality that ICE officials, who are opposing counsel in immigration court, determine when and how attorneys for asylum seekers conduct representation is deeply troubling.

Asylum is a critical safeguard against tyranny and persecution that the United States has extended to those in need throughout American history. Offering asylum protection is also something we owe to ourselves as Americans; to remain tethered to the foundations of our country as a place of religious and political freedom and a place where those who have been persecuted because they possess a characteristic they cannot change can be safe. The concerted efforts by our Government to close off access to asylum were conceived in cruelty and implemented for superficial political gain. We must do better.

For more information, please contact Lisa Koop, associate director of legal services, at lkoop@heartlandalliance.org; Jesse Franzblau, senior policy analyst, at jfranzblau@heartlandalliance.org; or Joann Bautista, policy associate, at jbautista@heartlandalliance.org.

STATEMENT OF Yael Schacher, Senior U.S. Advocate, Refugees International

NOVEMBER 19, 2019

Thank you for the opportunity to submit this written statement for this important hearing today.

Refugees International (RI) is a non-Governmental organization that advocates for lifesaving assistance and protection for displaced people and promotes solutions to displacement crises. We conduct fact-finding missions to research and report on the circumstances of displaced populations in countries such as Bangladesh, Colombia, Turkey, and Mozambique, among many others. RI does not accept Government or United Nations funding, which helps ensure that our advocacy is impartial and independent.

In testimony and reports over the past 10 months, RI has criticized ways that the Remain in Mexico policy has violated due process and led to great suffering. Rather than allow asylum seekers to pursue their claims in the United States, the policy returns them to Mexico, where there is little access to counsel, no provision for their basic needs, and no security to ensure their safety while their claims are adjudicated. This statement focuses on 3 ways that the policy raises legal and human rights concerns, drawing on examples RI has learned about from meeting with asylum seekers returned to Mexico; from observing Remain in Mexico immigration hearings relayed via video from port courts; and from speaking to migrants subject to Remain in Mexico who have returned to their home countries in Central America.

First, Department of Homeland Security (DHS) officials have not adequately fulfilled their obligations to screen asylum seekers regarding their fear of return to Mexico. In Tijuana, RI spoke to a Honduran woman who, without telling her where she was going, DHS flew from the Rio Grande Valley to San Diego in June 2019. When, at the port of San Ysidro, she objected to being returned to Mexico, U.S. Customs and Border Protection (CBP) forced her to sign the form by grabbing her arm, which she said still hurt weeks later. In Matamoros, RI spoke to men from Nicaragua and Honduras who told Customs and Border Protection officials that they had been kidnapped with the complicity of the state police in Reynosa before seeking asylum in the United States. A Honduran woman told RI of being trafficked into prostitution in Reynosa. Her body was covered in bug bites from being left by her traffickers, unconscious, in the desert, where CBP found her—but still returned her to Mexico, though she told them what had happened to her. None of these people had been referred by CBP to asylum officers for fear screenings about what happened to them in Mexico.

If referred to asylum officers at all, the fear screenings asylum seekers receive are inadequate and seem arbitrary. In one case RI followed for several weeks in El Paso/Juárez, a woman and her son were released from the Remain in Mexico program after their third fear screening despite absolutely no new facts in her case since the first one; the incident that made her scared to return to Mexico—an attempted kidnapping of her son—occurred before her first court hearing months earlier and had been mentioned in previous interviews with asylum officers. The end result is that this mother and child—who were traumatized, having witnessed the

murder of their husband and father in Honduras—spent several unnecessary months in fear in Juárez and separated from family in the United States.

Second, DHS is interfering with the ability of asylum seekers to get meaningful hearings on their asylum claims in immigration court. Asylum seekers who are returned to Mexico wait there for many weeks until they return to the port of entry to be escorted to their initial hearings with an immigration judge. This is the day they have been waiting for, their chance to tell a judge about why they fled their home countries to ask for refuge in the United States. Almost none of them have attorneys to tell them what to expect. What happens is devastating for them and devastating to witness. RI watched one hearing in El Paso at which a Q'anjob'al speaker, who clearly had not been able to say anything in her own language for weeks, pled through a court-arranged interpreter for help: "In Mexico, I am afraid and what hurts me most is that nobody wants to help me. Please put me in a cell," she begged. When she told the judge that she had documents attesting to abuse by her stepfather in Guatemala, the judge said now was not the time to address that. "Please can I tell you now?" she asked, to no avail.

Those brought to the port courts in Laredo and Brownsville see a judge on a television screen. According to policy guidelines, DHS (CBP and asylum officers) not the Executive Office of Immigration Review (the section of the Justice Department that employs immigration judges) controls who is exempted from the Remain in Mexico program. Asylum seekers learn quickly that the judge is powerless to take them out of the program, powerless to unite them with spouses and children in detention or otherwise in the United States, powerless to help them find counsel to represent them or a translator to help with their asylum application and evidentiary documents. If any start telling the judge about persecution they have faced, the judge silences them. At one hearing, a judge in Harlingen left the courtroom while the attorney for DHS and the officer in the port court determined who would be referred to an interview with an asylum officer about their fear of return to Mexico; it was, in the judge's words, to DHS and not to her that fear needed to be expressed. When the judge returned, she told all the asylum seekers that the one thing that was certain was that, if they did not return to a hearing in 4 weeks with their asylum applications completed in English, they would be deported in their absence.

Despite the odds, some asylum seekers try their best to pursue their cases: Find attorneys or represent themselves, submit their applications, and return for individual hearings on the merits of their asylum cases. Yet obstacles, both physical and technical, abound. In September, Refugees International met one Nicaraguan father and son reporting to the port of entry in Nuevo Laredo at 4:30 a.m. as is required for morning court hearings. They had just been released by men who had kidnapped them on their way to the port. In early November, Refugees International was in a courtroom in Harlingen with a judge and a translator while a Cuban asylum seeker appeared for her merits hearing at the port court in Brownsville. Due to pressure to expedite cases, only 2 hours had been allotted for a merits hearing that typically takes all day, but would certainly take longer since simultaneous translation is not possible when using video technology conferencing. The woman was still testifying when the court had to close. This meant that both she and the other asylum seeker that was to appear that afternoon had to have their hearings reset and would have to wait in Mexico until late February. They must return to Matamoros—where an unofficial refugee camp lacking sufficient clean water, food, schooling, and security is home to thousands of waiting asylum seekers.

Many asylum seekers feel they cannot wait it out and therefore ask to be sent back to their home countries or just return on their own, the third major problem with the Remain in Mexico policy. These asylum seekers have not yet had a chance to seek protection and may be at risk upon return to their home countries. In the spring, RI was in the court room in El Paso when a Guatemalan woman told a judge that she had no money and was afraid to wait and travel through Mexico on her own, especially without her own and children's identification documents, and insisted on deportation. She told the judge that though she was very afraid to return to Guatemala, she would rather be killed there, where there would be people to take care of her children, than in Mexico, where she knew nobody. Another woman returned to Guatemala in September, after a man threatened her and her children while they were waiting in Tijuana for their next court date. In October, RI spoke to this woman on the phone. She feared for her life in Guatemala—the partner she fled originally was still threatening her—and wanted to know how she might reunite with her elder daughter, who had been separated from her at the border, detained for 3 months, and then released to relatives while she pursued her asylum claim. Since the mother had missed her September Remain in Mexico court date in San Diego, however, she had been deported in her absence and is barred from relief in the United States for a decade.

The Remain in Mexico policy thus cuts off the right to seek asylum and returns asylum seekers to danger in violation of U.S. and international law. It also separates families and makes a sham of the idea of justice in immigration court.

STATEMENT OF SAN ANTONIO REGION JUSTICE FOR OUR NEIGHBORS (SARJFON)

NOVEMBER 18, 2019

San Antonio Region Justice For Our Neighbors strongly urges Congress to reassert legislative authority over our Nation's immigration policy and end the violation of human dignity and human rights being perpetrated by our Government at our Southern Border. As a 501(c)3 faith-driven provider of immigration legal services to border communities from Brownsville to Laredo to Eagle Pass, we have significant exposure with asylum seekers adversely impacted by the Migrant Protection Protocol/Remain in Mexico Policy.

Our first engagement with clients struggling to survive MPP started shortly after its implementation in Texas and these words (Google translated and abbreviated from an email received July 26, 2019) requesting legal representation speak for themselves:

"Hello madam blessings. Yesterday several girls who were in the tents with me went to the first court. From here . . . she did not want to return to [Mexico] because she explained to the judge the dangers here and the judge allowed her to go to the detention center. Madam, I know that this first court depends on the judge's decision but first of all on God. I need please that if I am not allowed to speak you ask the judge to take me to a detention center . . . 5 days ago they kidnapped a . . . girl near here and her family is desperate. Yesterday at 9 pm several police officers arrived here . . . and shouted, and knocked on the door, we locked ourselves here in the room and turned off the light because we were very afraid. Because here the police are corrupt . . . Here we have no security of any kind. Please help me, I will thank you infinitely and God will bless you. Madam I prefer to be in a tent as I was, without taking a bath, going hungry, without brushing my teeth, almost without communication, with bad treatment. I feel SAFE in the United States, here in this country [Mexico] there is no security of any kind. Please help me. God bless you."

Please let this plea for safety stand as testimony for the many asylum seekers our staff are working to assist in each of the Texas border communities impacted by MPP. We believe her words echoed by countless others being prevented from lawfully pursuing their asylum claims ought to compel elected officials to take steps immediately to end MPP.

Our staff/attorneys would be happy to answer any questions you might have and shed light on the unimaginable conditions those relegated to MPP are being forced to endure. We also extend an invitation to the committee to facilitate direct video conference communication with asylum seekers with whom we are working. We appreciate the opportunity to share this information and we look forward to learning of positive steps toward restoring justice for those seeking asylum.

STATEMENT OF TODD SCHULTE, PRESIDENT, FWD.US

NOVEMBER 19, 2019

The tents start a few feet from the U.S.-Mexico border—and in some places, the tents press up against the building directly at the border. When you walk over the short bridge from Brownsville, Texas to Matamoros, Mexico, you immediately walk into what is best described as a tent city, filled with approximately 3,000 people who are blocked from applying for asylum in the United States and awaiting the results of their process in the safety of America. You see dozens of children: Some playing, some sitting, some nursing, and some bathing in the dirty water of the Rio Grande. You smell the camp because the Mexican government refuses to allow more than a handful of portable toilets for a few thousand people, leaving people to need to relieve themselves on the outskirts of the camp.

And because it is just over the border, and just a little harder for the U.S. public to see than the horrors of the 2018 zero tolerance family separation crisis (which continues) or the awful conditions of confinement we say dominate headlines in 2019, we have not yet seen the outrage over the Remain in Mexico policy, which when layered with a series of other policies, has resulted in the unprecedented at-

tack on the basic decency of families attempting to seek asylum at the United States and Mexico border.

The assaults on America's system of asylum and the basic decency deserved by these families are no less, and that is why today we are submitting this statement for the record.

Why do approximately 3,000 people sit in these horrible conditions, sleeping in old tents, bathing in dirty water, without clean water or toilets, and subject to harsh weather? Because they're making a rational decision that these awful conditions are better than the risks that come with moving away from the border, where regular kidnappings and other serious—and deadly—risks exist at terrible rates.

Over the last few months, the most powerful country in the history of the world has sent back over 60,000 people—mostly families, often women and children—back to Mexico to wait in terrible, deeply dangerous conditions for months and perhaps years for their day in court on their asylum hearings. The United States sends these families back to areas its own State Department says are too dangerous for travelers. No one should repeat the Orwellian label of “Migrant Protection Protocols” that has been given to this policy.

And so instead of living in shelters away from the relative safety of the border and access to basic health and legal services, people have chosen to live in camps within view of the United States.

People do not have a right to automatically receive asylum, but they do have a legal right to request asylum and should have the right to a fair process and to await this process in safety. The Remain in Mexico policy processes families through tent courts set up directly at the border. The judges are often dozens or hundreds of miles away. Almost none have attorneys. After their hearings, they are sent back to dangerous conditions where they are targeted for kidnapping.

Over the last year-and-a-half, the Government of the United States of America has pursued a series of intersecting policy goals designed to essentially eliminate the entire asylum system of Southern Border. That is, through policies such as “metering,” Remain in Mexico, the various asylum bans and “Safe Third Country”-like agreements combined with the intentionally cruel and chaotic treatment of families and children—including babies—they seek to nearly eliminate the ability of anyone to avail themselves of their legal right to seek asylum.

For the constant, misleading rhetoric about how this must be about unauthorized immigration and how “The Wall” is the answer to a falsely-defined problem, in fact this is part of a pattern of assaults on nearly every legal immigration avenue. The refugee program has been slashed to near extinction. High-skilled immigration avenues are under attack. Regulatory and administrative hurdles are being thrown up to make everything from a U.S. citizen petitioning for a spouse to come to the United States to a global manufacturer getting that world-class engineer harder, more expensive, and ultimately less likely.

In Matamoros, you can see the United States from every corner of the tent camp—and in Matamoros, you see the result of these multi-pronged, chaotic, and cruel assault on immigration and asylum channels.

Two months ago, there were a few hundred people in tents. Today, approximately half of the 3,000 are children. In the absence of either the Mexican or U.S. Government as well as major international organizations like the United States or the Red Cross, there is an amazing contingent of volunteer-led organizations who work daily to do what they can to provide basic humanitarian services, a sense of humanity and—where they can—some legal services to these organizations. The volunteers from Team Brownsville prepare and walk food for hundreds over the bridge every night, while Angry Tias and Abuelas provides donated basic humanitarian needs like clothes. Private attorneys volunteer their time and non-profits send volunteer attorneys. Volunteers with Global Response Management who previously worked in war zones like Yemen and served in the U.S. military provide basic medical support under a tent. Attorneys and staffers with civil rights organizations like Texas Civil Rights Project and LUPE fight tirelessly to show the world what is happening. We need policy change, but in the mean time we encourage others to support these and other great groups and are deeply thankful to them.

This is the result of the policy choices made by the United States of America, and just because it exists outside of the United States, it makes it no less awful or devastating to tens of thousands of people who look to the United States for a chance to survive threats to their lives—a chance that the United States is denying them today. We urge the Government of the United States to reverse these policies and uphold the best of what this country can be by ending the Remain in Mexico policies and related attacks to essentially eliminate the asylum system.

STATEMENT OF KARLA BARBER, DALLAS, TX

I am submitting this statement for the Congressional hearings on Migrant Protection Protocols (MPP) scheduled to begin on November 19, 2019.

I have just finished a trip to visit the Mexico border towns of Matamoras and Ciudad Juárez to see for myself the effects of MPP.

What I saw in Matamoras is horrifying. Over 2,500 asylum seekers in an encampment right at the bridge living in tents. A handful of porta-potties provided by the volunteer group Team Brownsville overflowing with human waste. People forced to bath in the very polluted Rio Grande. Children without shoes. Sick children, sick adults. All living in tents crammed together. They rely on the donations brought over by volunteers in Brownsville to survive.

In Juárez I saw approximately 200 refugees in a tent encampment by the Santa Fe bridge and another 800 near the Free Bridge. I met a 7-year-old girl; she told me about the “list”; “they are on number 33; my family is number 183”.

I visited 2 shelters. At one, I met a boy with Down’s syndrome whose face was frostbitten in the hieleras (ice box). He and his mother sent back to wait in a shelter that has no heat.

I talked to a family (a mother, a father, a young daughter) who were kidnapped and held captive in an abandoned church. Held for 3 days, they broke a window to escape, and found their way to the shelter where they share a 2-bedroom “house” with 7 other families; a total of 25 people. They have family in the U.S. ready and willing to sponsor them.

I heard stories about kidnappings and murders.

All of this because of a manufactured crisis caused by MPP. This practice needs to end.

Thank you,

KARLA BARBER,
[Dallas, TX 75219.

STATEMENT OF JANICE ZITELMAN, FREDERICKSBURG, TX

Good Morning,

I am writing to ask that you do all that is possible to end the Remain in Mexico policy. My husband and I have been volunteering with the Interfaith Welcome Coalition based in San Antonio for over a year. We have heard personal stories from the asylum seekers about their difficult journeys. All whom we have met just want a life for themselves and their children where they do not fear for their lives. The U.S.A. has treated them poorly even though they have a legal right to seek asylum. With the “Remain” policy they are suffering great hardship. Volunteers seek to assist them with food, clothing, and shelter on the Mexico side but it is totally inadequate. Our country is rich in resources and there is no need to try to keep them out when they are just following the law. They have sponsors who welcome them.

“No one leaves home unless home is the mouth of a shark”.

Our country has a responsibility to assist the asylum seekers since we played a great role in creating the unstable government and economic situation of the Central American countries.

Thank you for your service to our country,

JANICE ZITELMAN,
[Fredericksburg, TX 78624.

STATEMENT OF MARGUERITE D. SCOTT, LCSW-S, KERRVILLE, TX

NOVEMBER 17, 2019

Re: Statement Regarding MPP

Honorable Members of the House Homeland Border Security Subcommittee,

In the hearing you will hear from competent professionals about the effect of trauma on children and adults. Listen to them.

In my clinical practice, I have for decades treated adults survivors of childhood trauma. Such trauma is costly emotionally and financially to the individuals, their families, and their communities, to us all.

Do what you know is in alignment with basic American values of respect, “all men are created equal”, and what is in the best interest of the children—our future.

Move beyond fear.
Sincerely,

MARGUERITE D. SCOTT, LCSW-S,
[Kerrville, TX 78028.

STATEMENT OF DOUGLAS STEPHENS, ESQ., GOVERNMENT ACCOUNTABILITY PROJECT

November 18, 2019.

The Honorable KATHLEEN RICE,
*Chairwoman, Subcommittee on Border Security, Facilitation, & Operations, U.S.
House Committee on Homeland Security, Washington, DC 20515.*

The Honorable CLAY HIGGINS,
*Ranking Member, Subcommittee on Border Security, Facilitation, & Operations, U.S.
House Committee on Homeland Security, Washington, DC 20515.*

Dear Committee Chairs: Below please find a written statement for the record from our client, whistleblower Douglas Stephens, Esq., in support of the U.S. House Committee on Homeland Security's Subcommittee on Border Security, Facilitation, & Operations November 19, 2019 Hearing, Examining the Human Rights and legal Implications of DHS's "Remain in Mexico" Policy.

Mr. Stephens is a former Asylum Officer who resigned from USCIS in August 2019. While serving as an Asylum Officer, Mr. Stephens, after conducting 5 interviews under the Migrant Protection Protocols (MPP or "Remain in Mexico" program), refused to conduct further interviews, believing that implementing MPP violates numerous laws and treaty obligations and poses significant threat of harm to asylum seekers forced to remain in Mexico. After facing retaliation, he documented in writing the reasons for his concerns to his superiors in a 7-point memo.

Mr. Stephens shared his concerns with Senator Jeff Merkley (D-OR), which became an integral part of a report issued by Senator Merkley on November 14, 2019, "Shattered Refuge: A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum." Mr. Stephens has since spoken on the record to the press, including the *Los Angeles Times* and *This American Life*, motivated to shed light on MPP as an illegal, dangerous, and destructive policy, and to support his former Asylum Officer colleagues who remain in the untenable position of having to implement a policy that is illegal and dangerous. This same motivation prompts his statement to this committee.

Thank you for holding this important hearing and for the opportunity to submit his written statement regarding his decision to engage in protected whistleblowing based on his experience as an Asylum Officer seeing first-hand the illegal and inhumane effects of the Remain in Mexico policy.

Sincerely,

DANA L. GOLD,
*Counsel for Mr. Douglas Stephens, Senior Counsel & Director of Education,
Government Accountability Project.*

ATTACHMENT.—STATEMENT OF DOUGLAS STEPHENS, ESQ.

NOVEMBER 19, 2019

Chairwoman Rice, Ranking Member Higgins, and other Members of the subcommittee, thank you for providing the opportunity to provide a written statement relevant to this hearing on Examining the Human Rights and Legal Implications of DHS's "Remain in Mexico" Policy.

My name is Douglas Stephens.¹ I was an Asylum Officer in the San Francisco Asylum Office from September 2017 until August 31, 2019. Prior to my service in the asylum corps, I was a Department of Justice (DOJ) staff attorney for the San Francisco Immigration Court from September 2015 to September 2017. While at the Immigration Court, I reviewed 195 cases and drafted 96 judicial decisions. In my 2 years as an Asylum Officer, I conducted and adjudicated more than 350 Affirmative Asylum interviews, Credible Fear screenings, and Reasonable Fear screenings. I conducted 5 Migrant Protection Protocol (MPP) interviews, also known as Remain in Mexico interviews.

¹I, Douglas Stephens, am an attorney admitted to the practice of law in California. I received my Juris Doctor and a cross-disciplinary certificate in Human Rights from Emory University School of Law in May 2015. I received my Bachelor of Arts in International Affairs and Peace and Conflict Studies from the University of Colorado in 2007.

In late 2018, the Trump administration announced the Remain in Mexico policy. Under the policy, Asylum Officers are tasked with conducting an interview of non-Mexican migrants attempting to enter the United States by the Southern Border, nominally for the purpose of assessing the likelihood of harm the migrant would face if forced to remain in Mexico during the pendency of his or her removal proceedings before an Immigration Judge. As I am sure you are aware, the policy was slow to be implemented and is subject to on-going litigation. The San Francisco Asylum Office began conducting MPP interviews on or about June 2019, after the Ninth Circuit Court of Appeals lifted a temporary injunction on the policy. The San Francisco Asylum Office was assigned all MPP interviews originating for migrants that cross the Mexico-Arizona border.

To the best of my recollection, Asylum Officers in San Francisco received two “trainings” on the policy during the office’s weekly, all-hands, training meetings. Both trainings were nearly identical and consisted of nothing more than Training Officers and a Section Chief reviewing a PowerPoint presentation disseminated from RAIO (Refugee, Asylum and International Operations) headquarters. The first training occurred sometime in early 2019 before the program was enjoined. The second training occurred around June 2019, after the injunction was lifted.

At both trainings, the mood was tense and morale low. Officers raised numerous objections and concerns, including but not limited to the programs legality, the manner of implementation, the office’s jurisdiction to conduct the interviews, and our ethical obligations as Government officials and as licensed attorneys. In both trainings, those concerns went largely unanswered. The local San Francisco administration, including the director and section chiefs, appeared empathetic with the concerns raised but could provide no answers, maintaining an “I’m just the messenger” attitude. Notably, despite concerns being raised early in the year, there were still no answers or resolution to those concerns by the second training some 4 months later.

In tacit recognition of the validity of the objections, the San Francisco Asylum Office first attempted to implement MPP interviews on a rotating volunteer schedule. However, the number of interviews quickly exceeded the number of volunteers, and the interviews became mandatory for all staff. When I left the office at the end of August, MPP interviews were given priority over all other interviews and programs. If there were insufficient officers to meet demand from the border, the officers were pulled out of credible fear and affirmative asylum interviews to do MPP interviews. Additionally, mandatory overtime on nights and weekends was implemented. To my knowledge, that is still the situation in San Francisco, while other offices, like the Los Angeles office, have been able to operate on a volunteer basis.

I was assigned MPP interviews the week of August 5, immediately upon return to San Francisco from a detail to Dilley, Texas, and 1 week after I had applied for a supervisor position within the office. I was assigned 3 MPP interviews on August 6, and 2 on August 7. It is my firm belief that the Remain in Mexico program is illegal, violating the Immigration and Nationality Act and international law. I refused to conduct any more MPP interviews on August 8, 2019.

During those 2 days that I conducted MPP interviews, and over the following weeks, I had numerous conversations with the other asylum officers in San Francisco. These conversations were always furtive, and behind closed doors. Nobody I spoke to was comfortable with the MPP interviews. Officers who had not yet conducted an MPP interview were generally thankful and were hoping to somehow avoid the assignment. People would volunteer for otherwise undesirable work details so they could avoid being placed on the MPP schedule. A number of officers had already quit due to MPP before I was tasked with the interviews. Many more have left since. My impression was that the majority of the officers who left did so by transferring elsewhere within the agency. Although MPP was the motivation for leaving the asylum office, they often remained quiet about this fact, not wishing to jeopardize their careers. Individuals like myself, who ultimately chose to leave Government service entirely, were more vocal about the reason they were quitting. I know of at least one individual who took a demotion in order accelerate the transfer and avoid any complicity with MPP. I know of only 1 officer who has both refused to conduct MPP and maintained their employment at the asylum office.

The officers who had done MPP interviews were frustrated, angry, and demoralized. Where the previous Credible Fear interviews averaged 1 to 2 hours, MPP interviews could take 3 hours or longer—longer than a normal affirmative asylum

interview. However, nobody I spoke to had been able to get approval for a positive² determination, regardless of the facts being presented to them or the level of past harm in Mexico. In the rare instances that an asylum officer in the San Francisco office did make a positive determination, that determination was overridden by supervisors and changed to a negative.

Every officer I spoke to felt deeply concerned about MPP. I discussed at length with a senior asylum officer and fellow lawyer why MPP felt significantly worse than other types of interviews and negative decisions we issue. That was the question I was asking myself when I decided to look into issue of legality for myself.

Asylum Officers have two fundamental jobs: (1) Identify whether or not someone qualifies for asylum protection under the law and provide protection to those individuals; (2) identify potential National security concerns and fraudulent claims to safeguard the security of the United States and maintain the integrity of the asylum program. MPP does none of these things. While under the previous rubric of Credible Fear, both Asylum Officers and CBP were running background checks on applicants; Asylum Officers do not perform any background checks on individuals under MPP. Additionally, the program does nothing to eliminate fraud in the system, which occurs mostly in populations largely unaffected by MPP.

More egregiously, the program actively places asylum seekers in exceptionally dangerous situations. Asylum Officers must be well-versed on the political, social, and economic situation in an asylum seekers home country, or in the case of MPP, in Mexico. Every Officer conducting MPP was aware of the situation in Mexico and danger to migrants being reported, not only in the media but in expert reports from the State Department and the Asylum Corps' own research unit. However, under MPP, instead of offering protection, officers hear credible stories of past harm and feared future harm in Mexico, and then return the asylum seekers to Mexico—returning them to locations that the officer knows will put the migrant at risk of the exact harms Officers used to protect against.

This is the discomfort felt by every officer I have spoken to: Under MPP we are affirmatively and intentionally harming those same individuals we previously protected. In so doing, we are complicit in the persecution, torture, and other human rights abuses these individuals will face back in Mexico.

Drawing on my experience at the asylum office, the immigration court, and my training as a lawyer, I was able to quickly identify at least 7 ways that the MPP program violates the law, my oath to office, or the principles of the refugee program. The obvious illegality of MPP and the resulting harm to asylum seekers is what motivated me to refuse to continue doing the interviews. Had the only problem been a narrow legal question already being litigated, I am not sure I would have refused and would likely have waited for a judicial ruling. However, the scope of the illegality, the numerous violations across multiple sections of the INA and international treaty obligations, leads me to believe that whoever designed the policy was either ignorant of, or willfully blind to, the law. In addition, because the policy is actively causing harm to tens of thousands of individuals, it felt imperative to raise these concerns quickly.

On August 8, I refused to conduct any more MPP interviews or otherwise be involved in the program. I informed my supervisor that I was refusing because I believe the program is illegal in multiple aspects, and that by participating in the program Officers were breaking the law and violating their oath to office. I memorialized my objections and concerns in a memo. On Monday, August 12, I sent that memo as the body of an email to the management of the San Francisco Asylum Office, including the director, section chiefs, and the 2 supervisors who had reviewed my MPP interviews. I also included my union representative, because management had begun disciplinary proceedings against me for insubordination. I do not know if my concerns were discussed or elevated. Management never responded to my email, addressed my concerns in person, or even acknowledged receipt of my objections. Although I was not present, I was told by other asylum officers that management emphasized that MPP interviews are mandatory work at the next all staff meeting.

Through the union, I was put in touch with Senator Merkley's office because he was conducting a special investigation into possible legal violations within the asylum program. Having received no response from my superiors in USCIS, I decided I should share my concerns with the Senator. Senator Merkley ultimately utilized much of my memo in a report on the destruction of the asylum program, which he

²The term "positive" determinations refers to individuals who "pass" an MPP interview and are not sent back to Mexico; "negative" determinations refers to those who were returned.

published last Thursday, November 14.³ Ultimately, I decided to leave USCIS, feeling that my continued employment there was not in my best interest. Before leaving, I chose to share my memo with all of my San Francisco colleagues in an attempt to support those individuals who were actively struggling with the ethical dilemma of being forced to implement the policy. It is that same motivation—to shed light on an illegal, dangerous, and destructive policy, and to support my former colleagues—that compelled me to speak out publicly.

I now have the privilege of sharing these concerns about the illegal and dangerous effects of MPP with this committee.

SPECIFIC CONCERNS ABOUT THE LEGALITY & ADVERSE HUMANITARIAN CONSEQUENCES
OF MPP

MPP has been operating in the following manner. If, and only if, an asylum seeker expresses a fear of returning to Mexico to Customs and Border Patrol (CBP) Agents, CBP notifies the San Francisco Office. Interviews are conducted telephonically that same day. Officers remain in their home office and conduct a 3-way call with migrants being held in a CBP detention facility on the border and a third-party interpreter. The telephone connections are bad; the line is often fuzzy or had static, and calls are frequently dropped. The asylum seeker is denied access to legal representation during the interview and the interview will not be postponed to give the applicant an opportunity to find and confer with counsel.⁴

The purpose of the MPP interview is nominally to comply with our country's international obligation to the principal of non-refoulement—to not return someone to a country where it is more likely than not that the migrant be persecuted on account of their race, religion, nationality, political opinion, or membership in a particular social group, or where it is more likely than not they would be subjected to torture. The principal of non-refoulement has been accepted as a *jus cogens* within international law and has been codified in the 1952 Convention of Refugees and the 1967 protocol. It is an essential protection under humanitarian, refugee, international human rights, and customary law. It is codified within our domestic laws at INA § 241(b)(3), and referred to as Withholding of Removal. However, as I explain below, the MPP program almost ensures violation of this principal.

The MPP interviews are also unique from other tasks assigned to the Asylum Corps in a few key ways. First, the interviews are not contemplated in the INA and there are no implementing regulations. Second, an applicant can only be subject to MPP interviews if they are already in removal proceedings under INA § 240. Previously only Immigration Judges adjudicated claims arising from removal proceedings under INA § 240. Third, the burden of proof for a migrant to pass MPP interviews is “more likely than not,”⁵ which is substantially higher than any other interview adjudicated by Asylum Officers. By way of reference, affirmative asylum interviews are to determine if there is a “well-founded fear of harm,” which is usually quantified as a 1 in 10 chance of harm.⁶ Credible Fear interviews are referred to as asylum pre-screening interviews and have an even lower burden of proof, asking if there is a significant possibility an applicant could establish a well-founded fear at a full hearing.⁷ Finally, while in all other contexts an asylum applicant can have their claim reviewed or renew their petition before an Immigration Judge, a negative determination in MPP is unreviewable and results in the immediate removal of the applicant to Mexico.

With that in mind, I have concluded MPP is illegal for the following reasons, outlined below and with excerpts from the memo I sent to management and the San Francisco Asylum Office staff explaining my objections to conducting interviews under MPP:

1. There is no statutory authority for the MPP, and the program violates U.S. immigration law. What proceedings are to be given to a migrant when they arrive at the border is addressed in INA § 235(b). A careful reading of the statute makes it clear that the provision relied upon by the administration to justify MPP is inapplicable.

³ Office of Sen. Jeff Merkley, *Shattered Refuge, A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum* (November 2019), Appendix N: Confidential Whistleblower Email to USCIS Management Regarding Migrant Protection Protocols (August 12, 2019), pp. 77–80, available at <https://www.merkley.senate.gov/imo/media/doc/SHATTERED%20REFUGE%20%20A%20US%20Senate%20Investigation%20into%20the%20Trump%20Administration%20Gutting%20of%20Asylum.pdf>.

⁴ The outright denial of representation for an individual in removal proceedings also violates the INA, although I did not explicitly note this objection in my memo.

⁵ This is the same as a “preponderance of the evidence” standard used in most civil litigation.

⁶ See, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

⁷ 8 C.F.R. § 208.3(e)(2).

cable to the population being subject to MPP. Instead, those individuals must be placed in expedited removal proceedings and given a Credible Fear screening. They should not be forced to leave the United States territory while in removal proceedings. The short statutory analysis I provided in my memo is as follows:

The legal question at issue is whether the 2 provisions governing inspection for applications for admissions—expedited removal under INA § 235(b)(1) and “other aliens” un INA § 235(b)(2)—are mutually exclusive or if CBP can proceed under section (b)(2) even when an applicant falls within the requirements of expedited removal.⁸ The administration has claimed legal authority to implement the MPP pursuant to INA § 235(b)(2)(C), which allows for the return to a contiguous territory of an alien who is subject to admission and inspection procedures under (b)(2). However, section 235(b)(2)(B) provides explicit exceptions to individuals subject to section 235(b)(2) and specifically states that (b)(2) does not apply to aliens subject to inspection under (b)(1). Similarly, section (b)(1) provides an explicit exception for individuals who would otherwise be subject to expedited removal, which is referenced multiple times while describing expedited removal proceedings. INA § 235(b)(1)(F); see also, INA § 235(b)(1)(A)(i), (ii). The exclusion language under each provision makes clear that Congress considered and specifically determined who would be excepted from inspection under provision. Individuals subject to inspection under (b)(1) are not subject to provisions of (b)(2). The separation of the 2 processes for admission, 235(b)(1) and (b)(2), has been recognized by both the Supreme Court and the Attorney General. *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018); *Matter of M-S-*, 27 I&N Dec. 509, 510 (BIA April 16, 2019).

Furthermore, [. . .] whether an applicant for admission is subject to inspection under (b)(1) and (b)(2) is not discretionary. If an immigration officer determines that an individual is removable under INA §§ 212(a)(6)(C) or 212(a)(7) “the officer shall order the alien removed” pursuant to expedited removal proceedings. INA §§ 235(b)(1)(A)(i) (emphasis added). The mandatory nature of expedited removal has not been disputed and conforms with the Congressional intent of deterring undocumented migrations. Once an applicant expresses an intent to apply for asylum or a fear of persecution “the officer shall refer the alien for an interview by an asylum officer” for credible fear screenings. INA §§ 235(b)(1)(A)(ii) (emphasis added). In other words, individuals who apply for admission in the United States who are removable under INA §§ 212(a)(6)(C) or 212(a)(7) must be placed in expedited removal and must be given a credible fear interview if they request asylum or claim a fear of persecution. The MPP violates the INA because it inappropriately removes individuals who must be inspected and processed under expedited removal and credible fear, and places them in removal proceedings under section (b)(2).

2. The Asylum Office never had jurisdiction to do any of the MPP interviews that I conducted, or, to my knowledge any of the interviews conducted by any other officer at the San Francisco Office. This was a concern I had raised at the trainings and it was reaffirmed as soon as I began MPP interviews. The files we were given did not contain a Notice to Appear (NTA) which is the charging document that places someone in removal proceedings under INA § 240. Nor did the file contain any other charging document that would confer authority to the Asylum Office to conduct interviews. When I was discussing paperwork with an applicant at the end of one interview I learned that she had not been given an NTA or any other paperwork from CBP prior to her interview. This raises serious due process concerns, as the NTA is the document required for removal proceedings to begin and MPP interviews can only occur if someone is already in removal proceedings. Additionally, both statute and regulations require that the NTA provide the individual with a list of warnings if they fail to appear in court and notify them of their rights in removal proceedings, including the right to an attorney and an interpreter. Based on the lack of service to the asylum seekers before their MPP interviews and the speed at which MPP interviews were being conducted after someone arrived at the border, I seriously doubt that any NTAs were served on an immigration court prior to the interviews. This would, quite literally, make the entire MPP interview extrajudicial.

3. MPP interviews violate our international treaty obligations by discriminating against a particular class of migrants. At the time I objected, the policy targeted specifically individuals from Guatemala, Honduras, Nicaragua, and El Salvador. Although the policy has been expanded to other Latin American countries, the implementation solely on the Southern Border highlights the discriminatory intent. If the administration truly believes this policy is legal and justified, there is no expla-

⁸ Individuals are subject to expedited removal only if they are removable under §§ 212(a)(6)(C) or 212(a)(7).

nation that I can think of, other than intent to keep out a certain class of migrants and discriminate based on national origin, race, and financial status, to not also implement MPP on northern land borders, sea borders, and all ports of entry including airports.

MPP violates our country's obligation under the 1967 Protocol. By ratifying the Protocol, the United States, among other things, agreed to not discriminate against refugees on the basis of their race, religion, or nationality, and to not penalize refugees for their undocumented entry into the country. However, the MPP both discriminates and penalizes. Implementation of the MPP is clearly designed to further this administration's racist agenda of keeping Hispanic and Latino populations from entering the United States. This is evident in the arbitrary nature of the order, in that it only applies to the Southern Border. It is also clear from the half-hazard [sic] implementation that appears to target populations from specific Central American countries even though a much broader range of international migrants cross the Southern Border. It is also demonstrated by the exempting from MPP interviews certain populations from those countries who have a high likelihood of receiving a positive finding.

4. The policy also violates our international obligations under the 1967 Protocol by punishing asylum seekers for requesting protection. MPP is punitive in that it is clearly calculated to limit the future ability of a would-be asylum seeker from ever obtaining immigration status or protection in the United States by significantly increasing the odds they will receive a removal order and thereby be barred from entering the United States or applying for immigration benefits, including possibly, future asylum claims.

Failure of an individual to appear for their Immigration Court dates carries serious consequences, including receiving a removal order without being present in court. It is important to note that one of the frequently-cited justifications for making a negative MPP determination and claiming a migrant would be safe in Mexico is their supposed ability to internally relocate in Mexico. In other words, supervisors are enforcing negative MPP decisions because of lack of certainty that persecutors who previously harmed an applicant elsewhere in Mexico would find the applicant at the U.S.-Mexico border, or that a feared persecutor at the border would find the applicant if they moved elsewhere in Mexico. Although this logic strictly complies with non-refoulment, it runs directly counter to the premise that we expect people to wait in Mexico for the pendency of their section 240 removal proceedings, which require their presence in the United States for various hearings over a period of months or years.

[T]he implementation is calculated to prevent individuals from receiving any type of protection or immigration benefits in the future. There is no clearly-established policy and system for notifying applicants of changes to hearing dates and times, or for the applicants to provide change of addresses to the courts and Border Patrol. Without a highly functional notice system, the administration has ensured that a high number of applicants will miss their court dates. In such cases, immigration judges are required to order the applicant removed in absentia, thereby barring them from entering the United States for 5 to 10 years, subjecting them to reinstated orders of removal if the applicant again seeks protection in the United States, and thereby preventing them from applying from asylum.

5. MPP, as it is currently implemented, also violates the law, in that it severely limits the protected grounds for which an applicant could possibly receive a positive decision and not be returned to Mexico. Critically, along with race, religion, nationality, and political opinion, asylum seekers can receive asylum or protection under non-refoulment for their "membership in a particular social group," commonly referred to as "PSGs." Determining whether someone is a member in a particular social group requires a tri-part analysis. The sad irony of MPP is that by returning large numbers of vulnerable migrants to Mexico, we have created exactly the type of group contemplated by the refugee convention and INA.

For example, during the course of 1 of my 5 MPP interviews, it became readily apparent that the applicant had experienced significant harm in Mexico on account of his membership in one such potential PSG. I discussed the situation in the middle of the interview with a supervisor and was explicitly told that I was not allowed to make a positive determination on that protected ground and that I should not continue that line of inquiry.

By requiring asylum officers to disregard a critical part of the law, the administration is forcing asylum officers to break the law and violate their oath to office. As I wrote in my memo:

Participation in the MPP violates our oath to office. As Asylum Officers we have sworn to “well and faithfully discharge the duties of the office.” SF 61. Those duties include “proper administration of our immigration laws.” See, USCIS/RAIO Mission and Core Values, available on the ECN. Assuming that we did have statutory authority and proper jurisdictions for these interviews, policy is preventing us from complying with our sworn duty to properly administer the laws. Individuals subject to MPP are almost certainly members of a particular social group consisting of “non-Mexican migrants traveling through Mexico” or some alternatively phrased variant. Such a group shares an immutable past experience, is particular, and the evidence suggests is socially distinct in Mexico. However, CIS policy regarding which social groups are considered cognizable and the constraint on individual analysis, prohibits officers from analyzing whether such a group is cognizable and if an MPP applicant would be persecuted for their membership in such a group. These arbitrarily imposed restrictions on factual and legal analysis prevent us as officers from faithfully discharging the duties of our office.

6. The manner in which MPP was created and implemented, and in particular the circumvention of the Administrative Procedures Act, assures we are violating our obligations of non-refoulement and are sending individuals back where it is likely they will be harmed. Beyond all of the illegalities already discussed, I believe a significant part of the reason so many individual are being forced into Mexico stems from an inappropriate and misapplied legal standard in the interviews, combined with an interview structure that makes it impossible for an asylum seeker to meet their burden. Although someone could supposedly pass an MPP interview if they showed it was “more likely than not” they would be persecuted or tortured in Mexico, in reality the standard being applied to the interviews is much higher. I objected:

MPP complies with our obligations of non-refoulement in name only. Assuming that statute does delegate DHS authority to implement MPP-type interviews, we have no implementing regulations. The current system is ad hoc and not been subject to notice and comment making or any type of review. The regulatory process is critical to ensure that proceedings such as the MPP does not commit the numerous legal violations already noted. The current process place on the applicants the highest burden of proof available in civil proceedings in the lowest quality hearing available. This is a legal standard heretofore reserved for an immigration judge in a full hearing. However, here we are conducting the interviews telephonically, often with poor telephone connections, while at the same time denying applicants any time to rest, gather evidence, witnesses, or other relevant information and, most egregious of all denying them access to legal representation. The description of the MPP read at the beginning of the interview does not even explain what a “protected ground” is or what the applicant is required to prove. The ad hoc implementation, lack of regulations, and high legal standard all but ensure that an applicant is unable to meet his or her burden. Participating in such a clearly biased system further violates our oath of office.

7. Finally, I objected on moral grounds because, as I mentioned previously, the policy makes Asylum Officers complicit the future harm of asylum seekers:

[E]ven if all the above were remedied, the process is still morally objectionable and contrary to the RAIO mission of protection. The Asylum Office would still be complicit in returning individuals to an unsafe and unreasonable situation. One where we would likely find internal relocation unavailable were it the applicant's home country, and in fact regularly do make that determination for Mexican applicants. RAIO research recently reported the high levels of violence and crime specifically targeting migrant communities in Mexico, returned from the MPP. See RAIO Research Unit, News Summary Bulletin July 2019. Additionally, it is unreasonable to make individuals, often without financial resources and caring for small children, to wait an indefinite period of time without employment. The unreasonableness of such a requirement is why the law mandates the application clock and issuance of employment documents if the U.S. Government cannot process a request for protection in a timely manner. Assurances by the Mexican government that persons returned to Mexico under the MPP would receive work permits and protection were a key reason that the injunction was stayed. *Innovation Law Lab v. McAleenan*, No. 19-15716, 924, F. 3d 503 (9th Cir. 2019). However, the Mexican government has not fulfilled its promise of providing work permits and protection. See RAIO Research Unit, News Summary Bulletin July 2019.

While other immigration processes may result in returning someone to a place where they face true risk of harm because they do not qualify for protection or an

immigration benefit, such instances occur only after the applicant has received substantially more due process. Even then, those individuals are returned to their countries of nationality, not an arbitrary third country to which they likely have no ties. The MPP is substantively and morally distinct from other aspects of our work.

CONCLUSION

I do not claim to speak for all Asylum Officers, but I have good reason to believe my concerns are widespread and shared. I have not encountered a single officer that believes we should performing MPP interviews. Every officer I spoke to regarding MPP before I left USCIS, around a dozen officers, disagrees with the policy and the implementation. After sending my memo to the office, I was contacted or spoke with another dozen or so officers who thanked me and supported my decision. Since my name and objections were published in the National media last week, I have been contacted by even more officers.⁹ In total I would estimate I have been in contact with 2 dozen officers or more, from the San Francisco, Los Angeles, New York, and D.C. offices. One individual thanked me for being willing to be the public face for the officers. I have yet to receive a single negative comment from an Officer.

To conclude, MPP is an illegal program, violating multiple aspects of our laws, endangering the safety of thousands, and placing asylum officers in an impossible position. As an attorney and an officer of the Federal Government, I had a duty to uphold the law. I urge Congress to protect other Government employees who also have the obligation to oppose this policy but do not feel safe coming forward publicly as I have. Asylum is an echo of the core values of our Nation: Freedom of religion, political opinion, and identity. Our ability and willingness to protect those individuals fleeing persecution and torture establishes us as a leader in human rights and a beacon of hope. I urge you to take steps to end the egregious legal violations that are eviscerating the asylum program, resulted in a humanitarian crises of our own making, and greatly eroded our integrity as a Nation.

STATEMENT OF IRENA SULLIVAN, SENIOR IMMIGRATION POLICY COUNSEL, TAHIRIH JUSTICE CENTER

NOVEMBER 19, 2019

The Tahirih Justice Center (“Tahirih”) respectfully submits this statement to the U.S. House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, as the subcommittee examines the human rights and legal implications of the United States (U.S.) Department of Homeland Security’s (DHS) “Remain in Mexico” (RIM) policy implemented in January 2019.

Tahirih is a national, nonpartisan advocacy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence (GBV) over the past 22 years. The women and girls we serve endure horrific abuses such as rape, domestic violence, forced marriage, and human trafficking and are in dire need of humanitarian relief.

Tahirih remains deeply concerned about the administration’s implementation of the RIM policy earlier this year. It is well-documented that the policy, which forces asylum seekers to remain in Mexico while awaiting court dates in the United States, has proven extremely dangerous for the most vulnerable asylum seekers. While waiting in Mexico, survivors of GBV have faced horrors on par with the persecution they fled at home, while perpetrators of violent crime are emboldened and allowed to inflict grave human suffering with impunity.

Last December, just prior to implementation of the RIM policy, Tahirih attorneys met with survivors of GBV in Mexico who were staying at a temporary shelter. They had tried to request asylum at the U.S. port of entry as permitted by law, but were turned away. One woman we spoke with described how she fled Central America after suffering years of abuse by her husband. She endured regular beatings and rapes, with her husband becoming increasingly violent toward both her and their children. She fled to Mexico and applied for humanitarian relief there. However, several weeks later, her husband was able to locate her from thousands of miles

⁹ Molly O’Toole, *Asylum Officers Rebel Against Trump Policies They Say are Immoral and Illegal*, Los Angeles Times, Nov. 15, 2019, available at <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>; The Out Crowd, *This American Life*, Nov. 15, 2019, available at <https://www.thisamericanlife.org/688/the-out-crowd>.

away. He had an associate violently attack her and their children near the shelter in Mexico.

While en route to seek safety in the United States, women and girls also face alarming threats of rape, kidnapping, and other crime in Mexico unrelated to prior persecution. Below are only a few examples of our clients' stories:

- A 20-year-old Honduran woman seeking asylum in the United States was raped in Mexico after fleeing her country with her 2 young sons, ages 2 and 4;
- A 19-year-old Salvadoran asylum seeker fleeing with her younger brother was kidnapped in Mexico by the Gulf Cartel, and was sexually assaulted by one of her kidnappers;
- A 16-year-old Honduran girl was raped and sex trafficked in Mexico and is seeking relief in the United States as a survivor of human trafficking; and
- A 17-year-old Honduran girl, a 16-year-old Guatemalan girl, and a 15-year-old Guatemalan girl, who all qualified for asylum, were raped in Mexico after fleeing their home countries.

In addition to basic safety, survivors are also in dire need of trauma-informed mental health services and meaningful access to counsel. Yet, survivors are largely unable to access counsel in Mexico to assist them in navigating the complexities of asylum law. Without counsel, the majority will lose their cases even if they qualify under the law. Waiting months in Mexico without access to mental health services prolongs the healing process for both survivors and their children, delays their ability to make informed decisions about their legal options and next steps, and, as described above, risks compounding existing trauma by exposing them to additional threats of violence.

Thank you for the opportunity to submit this statement, and we are grateful to the subcommittee for bringing to light the dire consequences that the RIM policy is having on traumatized asylum seekers through this hearing.

STATEMENT OF TEXAS IMPACT/TEXAS INTERFAITH CENTER FOR PUBLIC POLICY

THREE KEYS TO STABILIZING THE SOUTHERN BORDER

- Stop the criminalization of migration.
 - End zero tolerance, "Migrant Protection Program" (Remain in Mexico), and port "metering."
 - Fund the civil immigration system to process migrants timely.
 - Invest in upgrades to ports of entry along the border that would include additional scanning technology to better facilitate cross-border movement of people and goods.
 - Adequately staff ports of entry to maintain efficient cross-border travel and require robust training for CBP officers to properly and efficiently process migrants at ports of entry.
- Stop the separation of families and the detention of children.
 - Reject proposals that would permit indefinite detention of families or children or that would limit *Flores* protections for any child.
 - Fund local government agencies and NGO's to provide humanitarian assistance, case management, and community-based alternatives to detention.
- Make all aspects of the asylum process transparent.
 - Permit international and domestic human and civil rights observers, including attorneys, and child welfare and medical professionals, to inspect and monitor CBP detention facilities and interact with detainees to assess the needs of families and children and recommend the best ways to process them.
 - Make publicly available regular DHS reports on the number of processing centers in operation, the population size in each center, the average length of stay in each center, and the average length of stay in all Border Patrol short-term detention facilities.

FAITH-BASED BORDER POLICY RECOMMENDATIONS

The Interfaith Immigration Coalition (IIC) is a partnership of faith-based organizations committed to enacting fair and humane immigration reform that reflects our mandate to welcome the stranger and treat all human beings with dignity and respect. Coalition members work together to advocate for just and equitable immigration policies, educate faith communities, and serve immigrant populations around the country.

Representing more than 50 faith-based organizations, we believe our moral standing as a society can be measured by our actions toward those most vulnerable among us. A deterrence and enforcement-only strategy at our border has had chaotic

and devastating impacts on arriving asylum seekers and is, in many ways, fueling the very migration it seeks to reduce. We call on the administration and Congress to enact humane, efficient, consistent, and just policies that will uphold the dignity of all God's people.

Address the root causes of forced migration and displacement

- Increase support for effective programs that strengthen justice systems, spur economic opportunities, and safeguard communities from climate displacement so that people do not need to flee in search of safety or survival.
- Use principled and strong diplomacy to urge governments to address rampant corruption and spur improvements in protecting human rights and strengthening rule of law, including by enforcing human rights and anti-corruption conditions on aid as well as levying sanctions on corrupt officials.
- Ensure U.S. foreign assistance does not go toward supporting human rights violators, increasing militarization, or otherwise exacerbating existing push factors which drive people to leave their homes

Improve and expand access to refugee protections in the United States

- Restore the original Central American Minors (CAM) program that offered a chance for children to find safety in the United States and reunify with a parent—without undermining access to asylum in the United States or at a U.S. border.
- Increase refugee resettlement to provide Central American refugees with much-needed alternatives to making the long journey north to claim asylum at the U.S./Mexico border.
- Strengthen Mexico's refugee system by providing assistance to international and civil society organizations such as UNHCR in order to strengthen Mexico's capacity to process asylum claims.
- Invest in critical U.S. programs that aid unaccompanied children by fully funding the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) to ensure that the agency can provide the full continuum of care and community-based services, as well as to reunify children with their family members, from whom they were separated, and sponsors, for all populations in its care.

Uphold access to asylum in a manner that offers a genuine humanitarian response and upholds U.S. and international law

- Expeditiously process all asylum seekers at—and between—ports of entry.
- End the Remain in Mexico ("Migration Protection Protocols") and "metering" policies that push people to cross between ports of entry and put the lives of asylum seekers at risk as they wait in what are often dangerous situations in Mexico.
- Reverse Department of Justice rulings that deny protection to those who have fled domestic violence and gang violence and that deny bond hearings to asylum seekers who entered between ports of entry.
- Resist proposals to remove protections for vulnerable children provided by the Trafficking Victims Protection Reauthorization Act (TVRA) and the *Flores* Settlement Agreement. Allowing unaccompanied children to be deported more quickly risks returning them to the very violence and exploitation they fled. Undermining the *Flores* agreement would wrongfully expand family and child detention in jail-like conditions.
- Reject policies that charge a fee or restrict work authorization for people seeking safety from violence and persecution.
- Ensure only asylum officers conduct credible fear interviews (CFIs) and that they receive the proper training and support to uphold access to asylum protections. This includes the necessary translation services available for CFIs. Prioritize real humanitarian support for asylum seekers, immigrants, and other vulnerable populations.
- Invest in legal representation initiatives to ensure all asylum seekers have the resources they need to meaningfully seek protection at the earliest stages of the process.
- Institute universal Legal Orientation Programs (LOPs)—including for families released from DHS or CBP custody—to explain appearance obligations, the legal system, and how to secure counsel. Such programs have been proven to increase court appearance rates.
- Improve partnerships with and increase resources for non-governmental organizations (NGO's) and other service providers to ensure a robust humanitarian response. This includes providing DHS with grant-making authority to financially support service providers during periods of influx and ensuring NGO's can pro-

vide the necessary humanitarian support and services to vulnerable migrants without fear of or retaliation and harassment from CBP or ICE officials.

Ensure humane, just, and orderly treatment of all asylum seekers, migrants, and people seeking safety

- Ensure access to lawyers and humanitarian services and ensure all people are released with correct documents. Allow legal and humanitarian service providers access to all CBP facilities in order to administer Legal Orientation Programs/Know Your Rights presentations, to properly represent clients, and to coordinate travel and family reunification for asylum seekers. Ensure all people are processed and released with correct and full documentation and with full knowledge of the next steps of their claim.
- Establish more orderly and humane release procedures between DHS and local NGO's by providing ample, regular notice before releases and ensuring safe release conditions.
- Ensure short-term processing facilities adhere to strict standards in order to maintain the safety and well-being of those in DHS custody. Facilities must have licensed child welfare professionals, medical professionals, and interpreters and must be fully equipped with potable water, appropriate food, separate and enclosed bathrooms/showers, and individual beds/cots. Short-term processing centers must not exceed custody time limits and must not function as additional child/family detention centers. All processing centers must provide timely medical screenings conducted by licensed medical care providers.
- Fully restore the Family Case Management Program (FCMP) which supports court appearance and compliance. This casework should be operated by non-profit entities.
- End family detention immediately and redirect resources into humane alternatives for asylum seekers and other vulnerable populations. Children should never be incarcerated or needlessly separated from a parent.
- End criminal prosecution of asylum seekers (such as unlawful entry, 8 U.S.C. § 1325, and reentry, 8 U.S.C. § 1326) which have skyrocketed over the past decade and made us less safe by diverting resources from real public safety threats and overwhelming Federal courts.
- Rescind the April 2018 Memorandum of Agreement (MOA) between DHS and the Department of Health and Human Services (HHS) which requires HHS to share the immigration status of potential sponsors for UACs with DHS, leading the population of UACs in shelters to increase significantly as sponsors fear coming forward.
- Make publicly available regular DHS reports on the number of processing centers in operation, the population size in each center, the average length of stay in each center, and the average length of stay in all Border Patrol short-term detention facilities.
- Invest in upgrades to ports of entry along the border that would include additional scanning technology to better facilitate cross-border movement of people and goods.
- Adequately staff ports of entry to maintain efficient cross-border travel and require robust training for CBP officers to properly and efficiently process migrants at ports of entry.

SOURCES

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U.S. Citizenship and Immigration Services, "In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors—CAM)," <https://www.uscis.gov/CAM> American Immigration Council, "Legal Orientation Program Overview," <https://www.americanimmigrationcouncil.org/research/legal-orientation-program-overview>

FAR BETTER WAYS TO USE FEDERAL TAX DOLLARS, IN LINE WITH OUR VALUES AND HUMAN DIGNITY

The Interfaith Immigration Coalition (IIC) is a partnership of faith-based organizations committed to enacting fair and humane immigration reform that reflects our mandate to welcome the stranger and treat all human beings with dignity and re-

spect. Coalition members work together to advocate for just and equitable immigration policies, educate faith communities, and serve immigrant populations around the country.

PRIORITIZE INVESTMENTS THAT RESPECT HUMAN DIGNITY

Congress should fund the following programs, services, and structures to insert humanity, compassion, and dignity into U.S. immigration and border policy.

- *Enact responsible border policy and involve local communities in decisions that impact their lives.*—Proposals impacting border communities must include true partnerships with border communities in decision making; recognize the dignity and humanity of people who are migrating; honor the principle of non-discrimination; strive for social cohesion and inclusion; and uphold the inalienable human rights of life, liberty, and the pursuit of happiness. Responsible policies train border authorities in global best practices, including limiting the use of force, and training that prioritizes saving people's lives and avoiding tactics that endanger them. It is equally critical that the United States wholly welcomes asylum seekers and immigrants; provides access to interpretation in a language they understand, along with information about their rights, freedoms, protections, cultural liaisons, and legal assistance. *SOURCES: Southern Border Communities Coalition (SBCC); Faith-Based Border Policy Recommendations*
- *Invest in critical U.S. programs that aid unaccompanied children.*—The Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) bears responsibility for the care and custody of immigrant children who arrive in the United States unaccompanied (or are forcibly separated from their parents) pending their immigration court proceedings, many of whom are later reunified with a loved one. ORR is in the best position to ensure that unaccompanied children under the protection of the U.S. Government receive the full continuum of care they deserve, including: Proper shelter and care in the best interest of the child while in ORR custody; community-based services once released; and access to legal assistance. ORR must be fully funded to ensure the agency can provide the full continuum of care, as well as to reunify children with their family members, from whom they were separated, and sponsors. *SOURCES: U.S. Conference of Catholic Bishops (USCCB); Catholic Church Teachings; National Immigrant Justice Center; Kids In Need of Defense (KIND); Women's Refugee Commission (WRC); Interfaith Immigration Coalition*
- *Treat immigrants detained at the border and in the interior humanely.*—Passing the Dignity for Detained Immigrants Act (H.R. 2415, S. 697) would increase oversight over ICE immigration detention and ensure access to health screenings, medical care, nutrition, water, and sanitation services. It is equally important that the same oversight and access to services is exerted over CBP facilities and processing. *SOURCES: Friends Committee on National Legislation*
- *Fund community-based alternatives to immigrant detention, which have proved to be "safer than a detention-based approach, vastly less expensive, and far more effective at ensuring compliance with government-imposed requirements,"* according to the National Immigrant Justice Center. Passing the Dignity for Detained Immigrants Act (H.R. 2415, S. 697) would also expand access to these programs. *SOURCES: National Immigrant Justice Center; U.S. Conference of Catholic Bishops; Friends Committee on National Legislation (FCNL)*
- *Support communities providing care to newcomers and asylum seekers.*—Communities from San Diego to Brownsville are caring for and providing the welcome our administration refuses to extend.—Congress should be investing resources to allow community-based, non-governmental organizations to work alongside Federal agencies to care for and provide support to families and individuals navigating legal proceedings. *SOURCES: Columban Fathers Missionary Society of St. Columban; Annunciation House; United Church of Christ*
- *Provide access to refugee protections for Central Americans.*—The U.S. Government should restore the original Central American Minors (CAM) program that offered a chance for children to find safety in the United States and reunify with a parent—without undermining access to asylum in the United States or at a U.S. border. In addition, the administration should expand refugee resettlement programs to provide Central American refugees with much-needed alternatives to making the long journey north to claim asylum at the U.S./Mexico border. *SOURCES: Church World Service; International Refugee Assistance Project (IRAP)*
- *Fund ORR to assist all vulnerable populations the agency is mandated to serve.*—For multiple years, ORR has reprogrammed funding for refugee resettlement services to meet the needs of unaccompanied children. Congress must en-

sure adequate funding for all populations within ORR's mandate, including refugees, trafficking survivors, asylees, torture survivors, unaccompanied children, Special Immigration Visa (SIV) holders, and others. *SOURCES: Church World Service; Offices of Senator Murphy, Sen. Van Hollen, and Rep. DeLauro*

- *Restore U.S. moral leadership in refugee protection.*—The world is experiencing the worst crisis of displaced people in history, with over 68 million people pushed from their homes, and 25 million refugees world-wide. Yet, the Trump administration has reduced the number of refugees resettled in the United States by 75 percent, and set this year's admissions goal at 30,000—the lowest level in U.S. history. Congress should pass the GRACE Act (S. 1088/H.R. 2146), preventing the President from setting a refugee admissions goal at a level below 95,000—the historic average. Congress should also use the power of the purse to hold the administration to meeting its very low admissions goal of 30,000 and restore refugee admissions to 95,000 in fiscal year 2020. *SOURCES: Church World Service; Refugee Council USA; Oxfam America*
- Provide international aid for community-building programs that “counter violence, strengthen justice systems, spur economic opportunities, and safeguard communities from climate displacement, so that people do not need to flee in search of safety or survival,” in the words of Human Rights First. *SOURCES: Latin America Working Group; Alianza Americas; Human Rights First; Evangelical Lutheran Church in America (ELCA)*

STOP FUNDING TOOLS THAT DISREGARD MIGRANTS' HUMANITY

Federal spending on border and immigration enforcement has skyrocketed since the 1990's. Border militarization, mass incarceration of immigrants, and an abhorrent lack of oversight have led to unspeakable human tragedies, including the recent deaths of children and transgender migrants in U.S. custody and the misuse of solitary confinement.

U.S. taxpayers should know what immigration restrictions their hard-earned paychecks are funding, how the administration is mismanaging Federal tax dollars, and the consequences for human lives.

This summer's funding debate begins with the following policies and structures already in place:

- *20k border agents.*—In 1993, the United States had just over 4,000 U.S. Border Patrol agents. In fiscal year 2018, there were nearly 20,000. The vast majority (16,000) operate along the Southern Border. (*Source: American Immigration Council*)
- *8k deportation agents.*—In fiscal year 2003, there were just over 2,700 deportation agents working for ICE. In fiscal year 2018, that number had grown to 8,000. (*Source: American Immigration Council*)
- *6,500 “special” agents for criminalizing workers.*—ICE also has 6,500 agents within their Homeland Security Investigations (HSI) unit. HSI has been involved in massive workplace immigration raids and other initiatives aimed at criminalizing work. (*Sources: American Immigration Council, Immigrant Legal Resource Center*)
- *ICE spending +103 percent.*—Spending on ICE functions, including immigrant detention and deportation, has increased from \$3.3 to \$6.7 billion since the creation of DHS. (*Source: American Immigration Council*)
- *CBP spending +149 percent.*—Likewise, funding for Customs and Border Protection, which includes the Border Patrol, also skyrocketed between fiscal year 2003 and fiscal year 2009, from \$5.9 billion to \$14.7 billion. (*Source: American Immigration Council*)

THE MASS INCARCERATION OF IMMIGRANTS DESERVES SEPARATE ATTENTION

- *Immigrant detention +600 percent, largest level in history.*—The Government is currently incarcerating 152,000 immigrants in more than 200 jails across the United States. This is the largest number of immigrants detained for civil immigration cases in history, up from 7,000 in fiscal year 2004. (*Sources: BuzzFeed News; The Marshall Project*)
- *This is 10k more humans than the number Congress authorized.*—Congress appropriated money to detain 40,520 immigrants, which is already too high, but this was not enough for ICE. In fiscal year 2008, ICE took money from other programs to expand immigration detention far beyond what Congress authorized. (*Source: National Immigrant Justice Center*)
- *This is actually human warehousing.*—It is called “civil detention,” but in reality, it is jail, with all the same restrictions on liberty and conditions of confinement. ICE consistently opposes release of any and all immigrants eligible

for bond. The agency even fights the release of asylum seekers who have won their cases. The goal is to break people's spirits so that they give up and accept deportation. Congress should not participate in this tactic of abuse by funding it. (Source: ACLU)

- *The deaths in CBP and ICE custody and recent DHS Inspector General reports point to the need for more oversight of detention and the robust use of alternatives to incarceration.*—The administration must be held accountable for abuse and poor conditions in immigration jails, both public and private. Functioning alternatives to detention should be the default policy rather than incarceration. (Sources: *Detention Watch Network*, *Freedom For Immigrants*)
- *Mass incarceration of immigrants is big business for private prison industry.*—Over 60 percent of detained immigrants are held in private prisons, and U.S. taxpayers pay 52 percent more to detain immigrants in these jails as compared to Government-run facilities. (Source: *Freedom For Immigrants*). A day after the 2016 Presidential election, stock prices rose 21 percent for GEO Group and 43 percent for CoreCivic. In fiscal year 2017, the two companies raked in a combined \$4 billion in revenue. (Source: *Migration Policy Institute*).

HUMANITARIAN UPGRADES TO MANAGE AND ASSIST OUR NATION'S ENFORCEMENT
(HUMANE) ACT OF 2019

Founded in 1982, the National Immigration Forum advocates for the value of immigrants and immigration to our Nation. In service to this mission, the Forum promotes responsible Federal immigration policies, addressing today's economic and National security needs while honoring the ideals of our Founding Fathers, who created America as a land of opportunity. For 30 years, the Forum has worked to advance sound Federal immigration solutions through its policy expertise, communications outreach and coalition building work, which forges powerful alliances of diverse constituencies across the country to build consensus on the important role of immigrants in America.

Sen. John Cornyn (R-Texas) and Rep. Henry Cuellar (D-Texas) introduced the Humanitarian Upgrades to Manage and Assist our Nation's Enforcement (HUMANE) Act of 2019 (S. 1303/H.R. 2522) on May 2, 2019.¹ This bicameral bill attempts to resolve the current humanitarian challenge at the Southern Border.

The bill would permit longer-term family detention, expanding the amount of time that migrant children can remain in immigration facilities with their parents, and permit expedited departures of unaccompanied migrant children coming to the United States from countries other than Mexico and Canada, reversing existing limitations on that practice. The bill would also make it harder for individuals to apply for asylum, among other provisions. This document provides a summary of the bill's key provisions.

Migrant Children

Changes Treatment of Migrant Children in Family Units.—The bill would permit the indefinite detention of migrant children and their parents by requiring the Department of Homeland Security (DHS) to hold family units during the pendency of their immigration proceedings, which can take years. (Section 2).

- Establishes that the *Flores* Settlement Agreement, which governs the conditions of children held in immigration detention, does not apply to migrant children who are apprehended with their parents along the Southern Border. (Section 2).
- Requires DHS to verify the relationship between migrant children and their parents or other family members by photographing and collecting biometric information from apprehended migrant children, and provides for the use of DNA analysis. (Sections 2 and 11).
- Provides that migrant children apprehended with family members who are not their parents are to be treated as unaccompanied migrant children. (Section 2).
- Directs DHS and the Department of Justice (DOJ) to prioritize immigration court proceedings for migrant families in detention "[t]o the maximum extent practicable." (Section 2).

Changes Protections for Unaccompanied Migrant Children.—The bill would amend the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPPRA) to require that all unaccompanied migrant children (UACs) be subject to the contiguous country (i.e., Mexico and Canada) screening. As a result, migrant children may withdraw their requests for admission to the United States without understanding the full consequences and with no immigration court hearing. Cur-

¹ Sen. Cornyn and Rep. Cuellar previously introduced the HUMANE Act (S. 2611/H.R. 5114) on July 5, 2014, though a significant portion of the bill's provisions have changed.

rently, migrant children from non-contiguous countries cannot be returned on an expedited basis and must be placed into the custody of the Office of Refugee Resettlement (ORR) during the pendency of proceedings (Section 3).

- Provides that U.S. Customs and Border Protection (CBP) would screen all UACs within 48 hours of being apprehended to determine whether they are a trafficking victim, have fear of return and/or are otherwise admissible to the United States. UACs that do not fit into those protected categories and are able to make an independent decision to withdraw their admission to the United States would be able to choose to return home without an immigration court hearing. (Section 3).
- Requires mandatory expedited removal for UACs who have committed a broad range of offenses, including entering the United States without documentation more than once when he or she knew the entry was unlawful. (Section 3).
- Directs DHS and DOJ to ensure immigration court proceedings for UACs are “prioritized and expeditiously adjudicated.” (Section 3).

Limits Release of UACs to Sponsors.—The bill would limit the ability to place an UAC who is in removal proceedings with a non-Governmental sponsor unless the sponsor is the biological or adoptive parent of the child and is legally present in the United States (i.e., not undocumented), among other requirements. The bill also establishes new requirements to conduct home studies to prevent UACs from being placed in the custody of dangerous individuals. (Section 6).

- Obligates HHS to provide DHS and DOJ with “any relevant information” about a UAC and his or her sponsor for law enforcement purposes, upon request, including immigration enforcement. (Section 4).
- Requires HHS to notify the Governor of a State before placing an UAC into the care of a facility or sponsor in such State and to provide a monthly report to the Governor on the number of UACs in the State by locality and age. (Section 8).

Asylum Seekers

Requires Arriving Asylum Seekers to Apply at Ports of Entry.—The bill would amend existing asylum law by requiring arriving migrants to apply for asylum at a designated port of entry. The bill makes individuals who arrived in the United States anywhere other than at a designated port of entry ineligible for asylum under most circumstances. (Section 10).

Establishes Regional Processing Centers.—The bill directs DHS to establish at least 4 regional processing centers to process migrant families in “high-traffic sectors” of the Border Patrol along the Southern Border. (Section 13).

- Establishes that DHS would “expeditiously” transport all migrant families apprehended by CBP in such sectors to the nearest regional processing center for criminal history checks, DNA analysis, medical screenings, and asylum interviews and credible fear determinations, among other activities. (Section 13).
- Requires DOJ to assign at least 2 immigration judges to each regional processing center to adjudicate immigration proceedings of migrant families held in the centers. (Section 13).

Border Security and Immigration Enforcement

Authorizes Additional CBP and ICE Personnel.—The bill would authorize CBP to hire more than 600 Office of Field Operations (OFO) officers for the ports of entry each year until the total number of OFO officers equals the staffing levels recommended each year in CBP’s Workload Staffing Model. The bill also authorizes Immigration and Customs Enforcement (ICE) to hire no fewer than 1,000 new Enforcement and Removal Operations (ERO) officers, 665 ERO support personnel, and 128 attorneys in the Office of the Principal Legal Advisor to assist with removal, asylum, and custody determination proceedings. (Section 14).

Improves Port of Entry Infrastructure.—The bill would provide DHS with authority to construct new ports of entry along the Southern and Northern Borders. The bill also requires DHS to modernize the top 10 high-priority ports of entry on the Southern Border by September 30, 2021. (Section 15).

Imposes New Bars on Visa Overstays.—The bill would make all individuals with nonimmigrant visas, such as tourist visas, ineligible for all immigration benefits or relief if they overstay their visa for a period of more than 30 days, with few exceptions, and to sign an acknowledgement confirming that they have been notified of such provisions. The bill directs DHS to detain individuals who subsequently overstay their visa and deport them through expedited removal within 90 days from the date they were detained. These provisions do not apply retroactively. (Section 17).

Other Provisions

Engagement with Mexico and Guatemala.—Within 270 days after the bill's enactment, DHS would be required to submit a strategy to Congress detailing how the United States should engage with the governments of Mexico and Guatemala regarding cooperation to secure the Mexico-Guatemala border. (Section 16).

Reports to Congress.—The bill requires the Federal Government to submit a set of reports to Congress on UACs no later than September 30, 2020. One of the reports, to be submitted by HHS, must include a detailed summary of ORR facilities and contractors being used to house UACs, the number of UACs released to a sponsor with undocumented status, and an assessment of the extent to which HHS is making efforts to educate UACs about their legal rights and provide them access to pro bono counsel, along with other information. (Section 9).

Miss RICE. The Members of this subcommittee may have additional questions for the witnesses, and we ask that you respond expeditiously in writing to those questions.

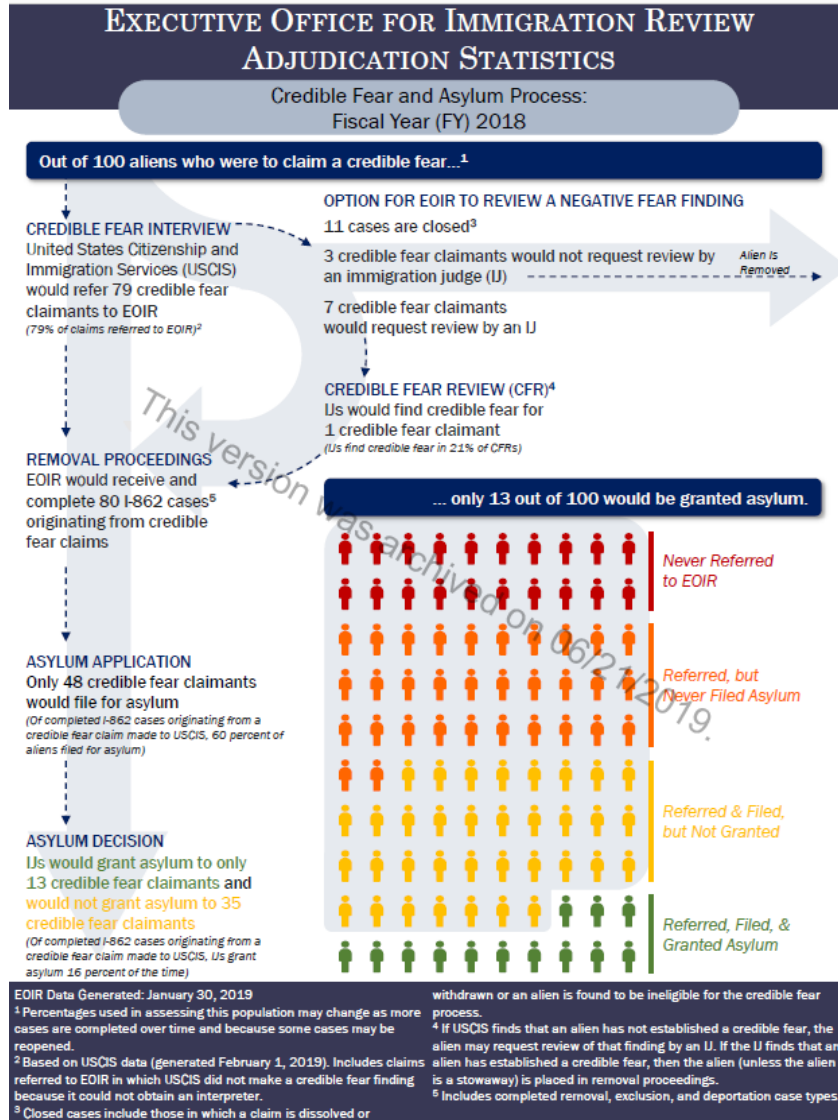
I believe that the Ranking Member would like to say something.

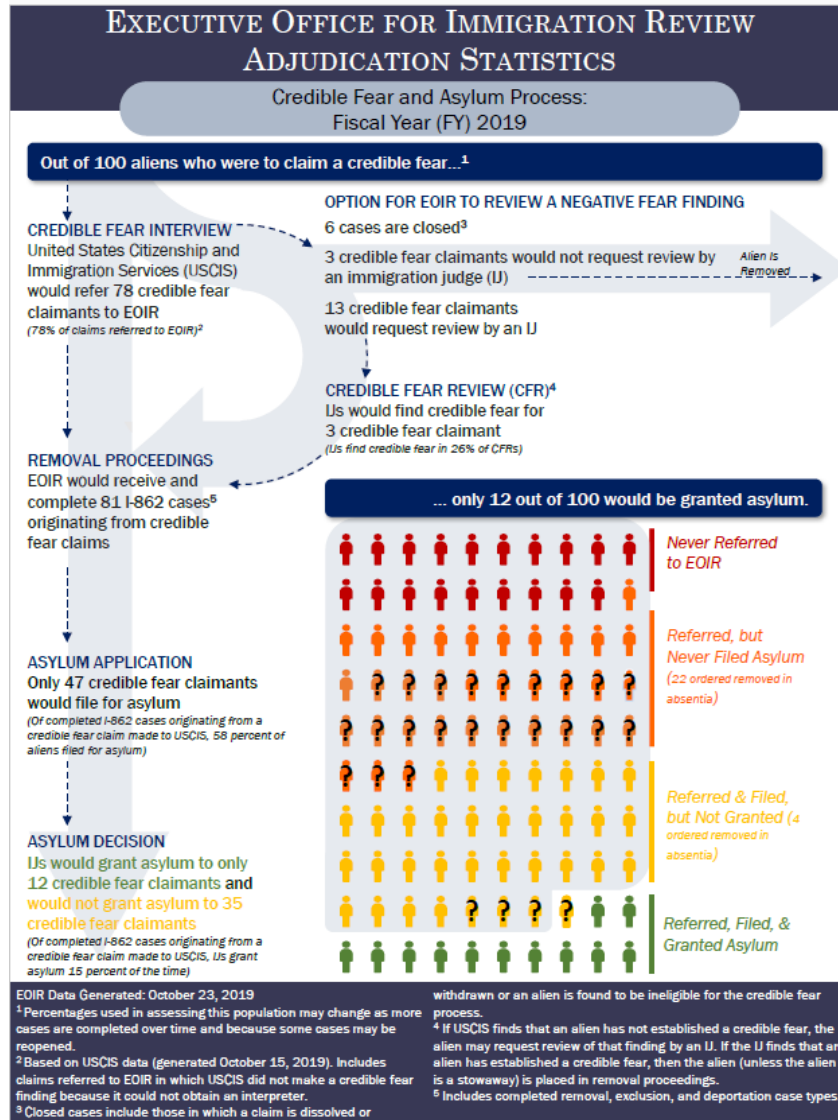
Mr. HIGGINS. Thank you, Madam Chair. I would like to ask for unanimous consent to submit the DoJ statistics that Mr. Homan and Congresswoman Lesko referenced. I would like them submitted for the record, please.

Then I have a brief follow-up question.

Miss RICE. Yes, they will both be admitted into the record, as will a 2-page document that I am holding, which—it is a TRAC immigration document that contains the most recent information regarding appearances by people appearing at the border.

[The information follows:]





TRAC Immigration

Most Released Families Attend Immigration Court Hearings

The latest case-by-case records from the Immigration Courts indicate that as of the end of May 2019 one or more removal hearings had already been held for nearly 47,000 newly arriving families seeking refuge in this country. Of these, almost six out of every seven families released from custody had shown up for their initial court hearing. Usually multiple hearings are required before a case is decided. For those who are represented, more than 99 percent had appeared at every hearing held. See Figure 1. Thus, court records directly contradict the widely quoted claim that "90 Percent of Recent Asylum Seekers Skipped Their Hearings."¹

Under our current system, there is no legal requirement that immigrants actually receive notice, let alone timely notice, of their hearing. Given many problems in court records on attendance and in the system for notifying families of the place and time of their hearings, these appearance rates were remarkably high.

These and other findings discussed below are based upon an analysis of court records conducted by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University. These court records, updated through May 2019, were obtained through a series of FOIA requests submitted by TRAC to the Executive Office for Immigration Review (EOIR).

The Role of Representation and Appearance Rates

A total of 65,691 adults and children had been flagged by the court as family cases since tracking began in September 2018 and were covered in this study. Of these, one or more hearings in removal proceedings had taken place in 46,743 of these cases. Details from court records on each of these hearings were examined. All of these families had already passed their initial credible fear screening and had been placed in formal removal proceedings.

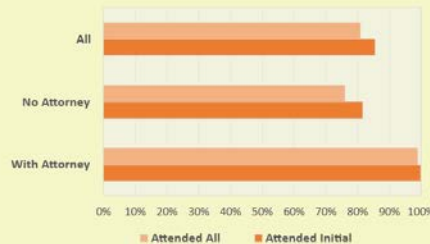


Figure 1. Attendance at Immigration Court Hearings by Families After Release
(Click for larger image)

TRAC found that with rare exception virtually every family attended their court hearings when they had representation. Appearance rates at the initial hearing were 99.9 percent. This is in contrast to appearance rates for unrepresented families of 81.6 percent. See Table 1. One reason for these higher rates for represented families is that it is an attorney's responsibility to keep on top of when and where their client's hearing is scheduled, and communicate these details to them. Thus, even if the court's notification system fails, the family still finds out where and when to appear for their hearing.

When a family doesn't show up, it does not necessarily mean they had intended to "skip" their hearing^[2]. Some immigrants who don't appear simply have not received notification of their hearing. Others may receive a written notice, but the notice may have been in English which they couldn't read. The Border Patrol states that it is quickly releasing families directly "with notices to appear in immigration court." While families may have been handed notices to appear, these notices are unlikely to contain the actual location and time for their court hearing since such details will not yet have been determined.

Receiving subsequent notices after the court sets the hearing date and location can be problematic.

Families released at the border may not yet know where they will reside, and may not have a way to reliably receive hearing notices sent through the mail - at least until they have time to get permanently situated.

For those who are returned to Mexico to await their hearing, families may not have any reliable way to receive notification of their hearing^[3].

There can be additional problems at the court's end. As of the end of May, TRAC's examination of court records showed that, symptomatic of the problem of families receiving timely hearing notice, there were nearly ten thousand "phantom" family cases on the court's books. These were cases entered into the Immigration Court's database system but with little information apart from a case sequence number. The date of the NTA, its filing date, charges alleged, and particulars on the family were all empty. Virtually all information on these phantom NTAs was blank - yet this is the same system used by court personnel to manage sending hearing notifications.

Table 1. Attendance at Immigration Court Hearings

Attendance at Court Hearing(s)	All	Represented	
		Yes	No
Number of Recently Released Families*			
All	46,743	9,891	36,852
Attended Initial	39,957	9,877	30,080
Attended All	37,803	9,789	28,014
Percent of Recently Released Families*			
All	100.0%	100.0%	100.0%
Attended Initial	85.5%	99.9%	81.6%
Attended All	80.9%	99.0%	76.0%

* Counts include each adult and child in a family unit; tracking of family units began in September 2018.

Even during normal times, in reviewing court records TRAC found that the addresses where notices are sent may be unreliable. Sometimes address fields are left empty, while for others TRAC found there were transcription errors. For example, the recorded zip code did not actually exist or implied a different city and state from those recorded, or the city wasn't even in the state shown. The address also may not be the current address because the immigrant had moved. Even when address changes were sent the court, these may not have been updated in the court's records⁽⁴⁾.

Court records may have other deficiencies. For this report TRAC undertook a detailed examination of information on each decision that indicated the family had not appeared at their initial hearing. These records include a flag indicating that the decision was made "in absentia" - that is, at a hearing where the immigrant failed to appear. It is the presence versus absence of this "in absentia" flag that should indicate the family member didn't attend their hearing.

However, TRAC's further examination showed that for 83 percent of these so-called "in absentia" cases it was unclear whether or not a hearing had actually occurred. This is because for each of these cases rather than recording that the case had been decided at the scheduled hearing, the immigration judge had recorded that s/he had decided the case "prior to [this initial] hearing." When this happens, the scheduled hearing need not occur so there would be no hearing for the family to have attended. Yet they were marked absent. A puzzling conundrum.

Appearance Rates by Nationality

TRAC also examined appearance rates by the family's nationality. Those who had already had hearings from Guatemala made up the largest contingent - 18,732 families. A total of 14,808 families from Honduras also had hearings. Mexican families and those from El Salvador were fewer - 5,267 and 5,153, respectively. Small numbers from a large range of other nationalities made up the remaining 2,783 families.

Appearance rates by these nationality groups are shown in Figure 2 and Table 2. Generally a similar pattern is observed. Appearance rates for represented families were close to 100 percent. Unrepresented families had somewhat lower rates, but still very high. However, unrepresented rates for Guatemala and Honduras were a bit lower than for families from Mexico and El Salvador.

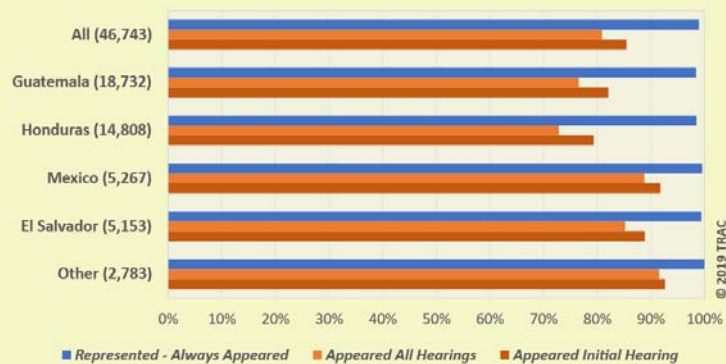


Figure 2. Percent of Released Families Attending Their Immigration Court Removal Hearings, by Nationality
[\(Click for larger image\)](#)

Table 2. Attendance at Immigration Court Hearings by Nationality and Representation

		Number			Percentage		
		Families*	Attended Initial	Attended All	Families*	Attended Initial	Attended All
Guatemala	All	18,732	15,380	14,338	100.0%	82.1%	76.5%
	Yes	3,035	3,027	2,987	100.0%	99.7%	98.4%
	Represented No	15,697	12,353	11,351	100.0%	78.7%	72.3%
Honduras	All	14,808	12,263	11,430	100.0%	82.8%	77.2%
	Yes	2,491	2,487	2,454	100.0%	99.8%	98.5%
	Represented No	12,317	9,776	8,976	100.0%	79.4%	72.9%
Mexico	All	5,267	4,953	4,835	100.0%	94.0%	91.8%
	Yes	1,457	1,456	1,451	100.0%	99.9%	99.6%
	Represented No	3,810	3,497	3,384	100.0%	91.8%	88.8%
El Salvador	All	5,153	4,783	4,652	100.0%	92.8%	90.3%
	Yes	1,838	1,837	1,827	100.0%	99.9%	99.4%
	Represented No	3,315	2,946	2,825	100.0%	88.9%	85.2%
Other	All	2,783	2,578	2,548	100.0%	92.6%	91.6%
	Yes	1,070	1,070	1,070	100.0%	100.0%	100.0%
	Represented No	1,713	1,508	1,478	100.0%	88.0%	86.3%

* Counts include each adult and child in a family unit; tracking of family units began in September 2018.

Appearance Rates by Court

TRAC also examined appearance rates separately for individual immigration courts. See Figure 3. Each court that had held hearings for at least 250 family cases was included. The number in parenthesis following the court's name in Figure 3 displays the number of family cases heard.

Not surprisingly, the volume of family cases varied markedly by court. The Houston Immigration Court had already held hearings for the largest number of families (6,499). The Orlando Immigration Court had handled the fewest (256).

Most courts showed patterns very similar to national appearance rates -- with represented families' appearance rates close to 100 percent, and unrepresented families somewhat lower. However, the four courts handling the smallest number of families departed from this pattern with generally lower appearance rates. Among the courts with a sizable volume of cases, Atlanta also showed noticeably lower appearance rates. The reasons for these differences remain unclear.

Some commentators suggest that families that have weaker cases are more likely to skip their hearings. However, there seems little reason for families with different strengths of asylum claims to migrate to some parts of the country and avoid others. While suitable information was not available to compare families and court practices at each location, it seems more plausible that the lowered appearance rates in some courts arose from particular deficiencies in the recording, scheduling or notification systems there.

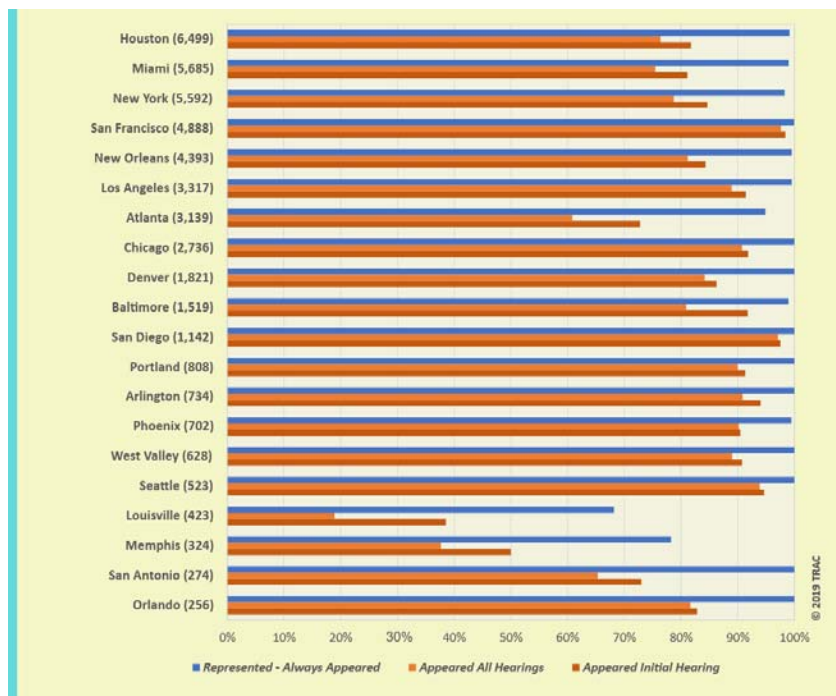


Figure 3. Percent of Released Families Attending Their Immigration Court Removal Hearings, by Court
(Click for larger image)

Footnotes

[1] See <https://www.nationalreview.com/news/dhs-secretary-90-percent-of-recent-asylum-seekers-skipped-their-hearings/>; <https://npr.com/dhs-secretary-whopping-percentage-migrants-dont-show-hearing/>.

[2] See [recent amicus brief](#) on past recognition of problems in discussion of history of notification requirements.

[3] See discussion at: <https://www.reuters.com/article/us-usa-immigration-returns-exclusive/exclusive-asylum-seekers-returned-to-mexico-rarely-win-bids-to-wait-in-us-idUSKCN1TD132> and <https://www.cbsnews.com/news/remain-in-mexico-trumps-plan-to-deter-migrants-faces-logistical-and-legal-hurdles/>.

[4] For example, see https://news.vice.com/en_us/article/xw94ea/leaked-report-shows-the-utter-dysfunction-of-baltimores-immigration-court.

TRAC offers free monthly reports on program categories such as white collar crime, immigration, drugs, weapons and terrorism and on selected government agencies such as the IRS, FBI, ATF and DHS. For the latest information on prosecutions and convictions, go to <http://trac.syr.edu/tracreports/bulletins/>. In addition, subscribers to the TRACFed data service can generate custom reports for a specific agency, judicial district, program category, lead charge or judge via the TRAC Data Interpreter.

Report date: June 18, 2019

Miss RICE. Yes, Mr. Ranking Member.

Mr. HIGGINS. Thank you, Madam Chairwoman.

Ms. Vela, you have been asked many questions today. You have sat there with poise and dignity and answered to the best of your ability. So I commend you and the panelists that joined you today. My brother of the Thin Blue Line, thank you for being here today.

We all struggle as a Nation to deal with the challenge of what we face at the Southern Border. It is good that our Chairwoman is courageous and called this hearing, and that testimony was offered based upon the various opinions. It is our job to consider

these opinions with respect for each other, with a common goal of finding some righteous solution.

I would like to point out that it has been stated several times that the State Department has indicated the too dangerous to travel classification for some of the areas in northern Mexico. Obviously, these are some of the areas where these illegal immigrants are being sent for—while they await processing through the—their asylum claim.

Let me just state that it is indicated that the alternative is to send them into the interior of the United States. But Mr. Homan has clarified, you know, what happens there. You know, a lot of those folks just disappear. They are going to stay here.

Let me share with America and with all of us that the following cities have something in common: St. Louis, Detroit, Memphis, Milwaukee, Baltimore, Oakland, Kansas City.

All of these cities have something in common. The citizens there are more likely to be subject to violent crime than the citizens of Mexico City. Crime stats from Mexico City are about the same as Washington, DC, so it is intellectually unsound to indicate to the American people that, just generally speaking, we are placing these immigrants in some greater harm's way by having them await their processing in Mexico.

Miss RICE. Well—

Mr. HIGGINS. Madam Chair, I just thank you so much for holding this hearing. I think we have received excellent testimony today, and I yield back.

Miss RICE. Mr. Ranking Member, thank you so much for that, and for your comments.

What I can do is assure everyone here that we are going to continue to have hearings about what is going on at the border, because we have to honor the people who are sitting here, all 5 of you who are bearing witness to what is happening there. We have to hold true to our democratic values as to who we are as a country. That is what these hearings are about, transparency and accountability.

I want to thank all of the witnesses so very much for their testimony here. It was a very long hearing. I think you can tell by the amount of Members who showed up today how important this issue is. So I want to thank you all for participating.

Without objection, the subcommittee record shall be kept open for 10 days.

Hearing no further business, the subcommittee stands adjourned. [Whereupon, at 12:20 p.m., the subcommittee was adjourned.]

